

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

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

1 Appearing for the Surface Transportation Board:

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

8  
9 Appearing for Public Affairs Management:

10 Scott Steinwert  
11 Planner

12 and

13 Cara Naiditch  
14 Assistant Planner  
15 Environmental Planning  
16 135 Main Street, Suite 1600  
17 San Francisco, CA 94105  
18 (415) 227-1100  
19 [c.aiditch@pamsf.com](mailto:c.aiditch@pamsf.com)

20

21

22

23

24

25

Charlene A. Berdahl  
Official Court Reporter  
Electronic Recording  
P.O. Box 1539  
Forsyth, MT 59327

(406) 346-7310

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

Page No.

Opening comments by Mr. Blodgett . . . . . 4  
Opening comments by Mr. Steinwert . . . . . 13

ORAL COMMENTS BY THE PUBLIC AUDIENCE

Ann McKinney . . . . . 19  
Wallace McRae . . . . . 22  
David Davenport . . . . . 28  
Clint McRae . . . . . 29  
Dan Dutton . . . . . 35  
Karol Felton . . . . . 39  
Judy Musgrave . . . . . 41  
Bill Musgrave . . . . . 44  
Christine Valentine . . . . . 46  
Nancy Carrel . . . . . 52  
Denise Wood . . . . . 55  
Wallace McRae (Additional Oral Comment) . . . . . 59  
Rick Felton . . . . . 65  
Paul Stollenwerk . . . . . 67

Reporter's Certificate . . . . . 69

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

\* \* \*

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

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

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

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

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

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

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

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

25 The Interstate Commerce Commission's

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

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

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

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

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

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

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

1 materials.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 May of 1986.

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

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

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

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

1 Mile Creek Alignment.

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

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

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

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

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

1 that it had filed in 1998.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

25           What about the Native Americans? We took

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

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

9 MR. BLODGETT: Thank you.

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

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

14 **ORAL COMMENT**

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

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

1 operation of the Tongue River Railroad.

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

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

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

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

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

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

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

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

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

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

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

1 and other improvements for potentially affected  
2 property owners.

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

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

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

3 Am I out of time? Close?

4 MR. BLODGETT: It's okay.

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

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

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

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

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

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

12 MR. BLODGETT: Thank you.

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

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

17 **ORAL COMMENT**

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

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

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

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

20 **ORAL COMMENT**

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

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

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

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

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

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

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

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

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

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

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

25           It's also mentioned that there will be a

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

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

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

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

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

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

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

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

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

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

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

12 Thank you.

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

15 **ORAL COMMENT**

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

1 detailed in the Constitution of the State of Montana.

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

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

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

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

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

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

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

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

1 coal bed methane development.

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

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

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

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

13 Thank you.

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

16 **ORAL COMMENT**

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

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

1 problems.

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

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

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

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

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

1 Thank you.

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

4 **ORAL COMMENT**

5 BY JUDY MUSGRAVE: Good evening.

6 MR. BLODGETT: Hi.

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

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

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

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

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

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

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

1 these impacts.

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

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

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

1 They found nineteen (19) new prehistoric sites,  
2 previously unrecorded, three historic sites, and nine  
3 prehistoric isolated finds within the study project  
4 area.

5 According to this SEIS no on-the-ground  
6 studies will be done until after the permit is issued.  
7 Does that make sense?

8 And finally, hasn't it been long enough?  
9 According to this SEIS, the Tongue River Railroad has  
10 been permitted from Miles City to Ashland since 1986  
11 and from Ashland to Decker since 1996. The company  
12 has been free to obtain right-of-ways from the  
13 landowners and begin construction for nearly twenty  
14 (20) years. Instead of moving forward with that  
15 project the company has done little but try to sell  
16 its scheme to investors. Meanwhile, Tongue River  
17 Valley residents have been forced to live under the  
18 shadow of an unneeded but permitted railroad and its  
19 associated impacts.

20 Thank you.

21 MR. BLODGETT: Thank you. Mr. Musgrave,  
22 followed by Christine Valentine.

23 **ORAL COMMENT**

24 BY MR. BILL MUSGRAVE: I'm Bill Musgrave.  
25 It's a hard act to follow my wife.

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

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

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

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

1 Thank you.

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

4 **ORAL COMMENT**

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

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

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

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

1 Montana.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Employment is seen as a positive for the

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

14 **ORAL COMMENT**

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

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

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

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

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

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

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

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

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

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

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

25           And to reiterate some other comments earlier

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

2 There is no need for this railroad.

3 Thank you.

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

10 **ADDITIONAL ORAL COMMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 MR. WALLACE MCRAE: Will you publish the

1 comments?

2 MR. BLODGETT: Yeah.

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

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

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

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

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

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

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

24 MR. WALLACE MCRAE: No.

25 MR. DAVENPORT: Somebody is going to have to

1 put --

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

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

6 MR. BLODGETT: Well --

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

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

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

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

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

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

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

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

5 MR. BLODGETT: Right.

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

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

10 MR. DAVENPORT: Yeah.

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

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

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

20 **ORAL COMMENT**

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

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

5 MR. BLODGETT: Can you state your name?

6 MR. RICK FELTON: What's that?

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

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

12 MR. BLODGETT: Okay.

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

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

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

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

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

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

3 **ORAL COMMENT**

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

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

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

19 Thank you.

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

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

25 Thank you.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

1 **REPORTER'S CERTIFICATE**

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

12 DATED this 21<sup>st</sup> day of November, 2004.

13  
14  
15 \_\_\_\_\_  
16 Charlene A. Berdahl  
17 Official Court Reporter/Notary Public  
18  
19  
20  
21  
22  
23  
24  
25