



PIA
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My name is Wallace D. McRae. I am president of Rocker Six Cattle Company, whose deeded land, and land leased from the State of Montana, is fated to be crossed by the proposed Tongue River Railroad. My address is:

Wallace D. McRae, President
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Forsyth, MT 59327

I previously reviewed and commented on the various documents prepared by the STB and have traveled to Washington, D. C., at my own expense, to consult with the ICC and its staff to convey the concerns of our family ranch corporation resulting from the construction and operation of the TRR.

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

I found the EIS to be extremely hard to study due to its format. I was forced to constantly flip back and forth between Volume I and Volume II in an attempt to make sense of the documents. Especially confusing was the inclusion of "old" language and the separated "new" information in the mitigation measures.

I was pleased the use of the word "should," which appeared to be merely suggestions to the TRR on their responsibilities to affected landowners, was changed to the obligatory word "shall." Thank you.

In coming to understand the obligations of the ICC and the STB, I discovered perhaps the most important criteria is that a proposed railroad **MUST** be judged to have a sound financial foundation in order to insure that it is not a fly-by-night speculative venture which will fail. Surely the STB is aware that the constantly changing financial backers involved in the TRR are indicative that it is a very shaky and speculative venture. In the fall of 1999, one of the financial backers of the railroad pulled out, giving voice to what previous major financial interests involved with the railroad indicated by their departure. *"We just gave it (our financial investment) back to the company. We didn't think this project made sense."* said Chevron spokesman Manfred Michimayr from the corporation's San Francisco headquarters. *"We didn't think it was going anywhere and we weren't going to keep spending \$5 million or \$6 million a year for something that was going nowhere."* Michimayr said. Why was this indication of financial instability

ignored? Further, the very structure of the TRR is in a constant state of flux. The various ownership positions are extremely cloudy and defy analysis. I would suggest that most, if not all, the current partners may wish to be in on the action, but do not wish to make a substantial monetary commitment to the project. Does the STB have evidence of firm financial obligations to the TRR? If so what are those commitments? My suspicions as to firm commitments are, in part, due to the past claim by the TRR that the Chase Manhattan Bank had given financial backing to the TRR, when in fact the commitment was to attempt to *FIND* investors for the venture. Is the STB aware of this duplicitous action?

The change to a limited liability corporation gives me great concerns, as well. Who, or what, is ultimately responsible for any liability associated with the construction or operation of the TRR? In cowboy vernacular what happens to landowners if the whole enterprise goes “belly up” sometime down the road? We Montanans are well aware of our state having to pick up the slack and assume responsibility for underfunded, speculative industrial ventures which failed. Despite attempts by legal representatives of the UTU and the NPRC to require the TRR to disclose financial information, the STB has refused to force the railroad to do so.

Once again, as I have in the past, I must protest the refusal of the STB to provide suitable maps of the proposed route. I defy any landowner to peruse a map of a 130 mile railroad on an 8.5” X 11” page, with no topographical features, and figure out where it is going and how it will impact their ranch operations. To further complicate the map problem, we now have Figure 1- 6 which adds the 1998 “proposed refinements” to the original 1985 and 1986 “approved alignments.” Additionally, the only “roads” in Figure 1 – 6 are US highways. Why (except for the fact there was no room) were other public (such as county roads) ignored? Finally, the only way to differentiate between the Tongue River and the ’85 & ’86 alignments is to assume that the river is the more winding than the original alignments since both are represented by the same type drawn lines. Surely there must be available to the STB maps that could better show topographical features, public (and private) roads, proposed placements of cattle passes, fences and other improvements for potentially affected property owners. There is not even a suggestion that I can find where the sidings might be located. The location of sidings and duration of their use should be spelled out, or shown on maps due to their interference with cattle movements and access to fire. Why does the STB refuse to supply usable maps?

Despite the suggestion that cumulative impacts of proposed mines, CBM development and potential power plants were considered, these were only briefly mentioned, then dismissed. Isn't it a requirement of NEPA for cumulative impacts be delineated and combined and not pushed off to be handled on an individual impact basis? We have the potential of being “incrementalized” to death in the Tongue River Drainage. I am especially disturbed that while mentioning the potential cumulative effects of the TRR and CBM development, the issue was dismissed by the statement: “These effects are not expected to be significant or adverse. Mitigation measures and agency oversight will be used to maintain water quality to surface waters in the Tongue River watershed.

No additional mitigation is warranted.” I have absolutely zero confidence in the validity of your information and your dismissal based upon that information.

On page 3-5 in Volume I the Northern Plains Resource Council (NPRC) is erroneously referred to as a Native American Tribe.

On page 4-59 references to “**Lands Permanently Acquired for the Proposed Rail Line (or ROW),**” erroneously assumes that there is not the option available to use an easement instead of the landowner being forced to transfer fee title for the ROW to the railroad. Therefore lands will not necessarily be permanently acquired for the ROW.

I fail to understand why there are no landowner representatives on the Multi-agency Railroad Task Force as described on Page 7-3. The exclusion of those of us who will, in all probability, be most negatively impacted by the construction and operation of the TRR represents a grave injustice and reinforces the pervasive feeling that our concerns and inputs are being calculatedly dismissed by both the TRR and the STB. The agencies, both state and federal, that are on the Task force are representatives of their respective governments. Governmental agencies are, above all, supposed to represent the public. This public trust is not being realized despite legal and constitutional mandates for them to do so. Rather, more and more often agencies not only fail to represent the public, but especially in the case of extractive and exploiting industrial corporations, represent those entities that prosper by imposing their wills on a defenseless public. Ideally, we should be able to depend and trust governmental agencies to represent our interests as landowners and members of the public. When the STB decrees that landowner requests for bridges for cattle passes are “too expensive” are they representing us? When metal tubes are deemed good enough for cattle passes, who are they representing? We ranchers are supposed to “negotiate” with the railroad. I prefer a concrete cattle pass to a corrugated metal culvert on our ranch. Are we given a chance when the STB has already conceded that potential request in favor of the Railroad?

Is the STB, or the BLM, or any other federal agency going to defer to our reasonable wishes with their knowledge of mandates by the President’s Energy Task Force in mind? Or with their awareness of Presidential Executive Order 13212, entitled “Actions to Expedite Energy Related Projects” are they going to just “go along” and “not rock the boat?” Another Presidential Executive Order (13211) recommended by the secret Energy Task Force headed by the Vice President is titled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use.” It states in part: ***“By the authority vested in me as President...in order to help the Federal Government coordinate a national effort to ensure reliable and affordable supplies of energy...develop an energy policy that expedites the expansion of facilities critical to production, transportation and manufacturing of (energy) products...and in order to appropriately weigh and consider the effects of the Federal Government’s regulations on the supply, distribution and use of energy, it is hereby ordered as follows...I am requiring that agencies shall prepare a Statement of Energy Effects when undertaking certain agency actions. As described more fully below, such Statements of Energy Effects shall describe the effects of certain regulatory actions on energy supply.***

distribution or use.” The President’s order continues: ***A Statement of Energy Effects shall consist of a detailed statement by the agency responsible for the significant energy action relating to any adverse effects on energy supply, distribution or use... should the proposal be implemented.***” The Executive Order was written by Jim Ford, a lobbyist for the American Petroleum Institute (API) and was signed by President Bush on May 8, 2001. On the same day Executive Order 13212 was also signed. These energy-related executive orders are law even though they were not debated, or passed, by Congress. At the November 17, 2004 public meeting in Ashland, we were assured that decisions on the TRR were being made in a “non-partisan” manner. Any recommendations, or decisions, made by any Federal Agencies are bound by the above referenced Presidential Executive Orders. Are Executive Orders 13211 and 13212 being complied with by the STB, BLM, CORPS and other Federal consulting agencies? If so, will the entire texts of the Presidential Orders 13211 and 13212 be included in the Final EIS? The President, by his actions, and those of his Cabinet members, have made crystal clear their goals for energy development are not to be “adversely affected.”

The Governor of Montana has taken a similar, if officially, unannounced, position that is well known by all persons employed by State Regulatory Agencies. The Governor’s tacit instructions have severely limited State Agencies’ employees to responsibly serve the public interest, since they know their jobs are on the line.

Is there any reason to expect that legitimate landowner concerns will be fairly addressed by a Task Force that does not include one affected property owner? I think not. I also think that by not including any landowners, you have united and solidified opposition to the Tongue River Railroad and made all of our tasks more difficult.

I take violent exception to the statement on Page 4-61 that says, ***“SEA believes that crossing non-irrigated grazing land does not constitute a severance of the parcel, because it would still be possible to move cattle between pastures.”*** I invite members of the TRR and the STB and their top hands to catch their best horses and come along to help us the first time we attempt to mash our cows and calves through a corrugated metal pipe. The statement goes on to say, ***“Ranchers have noted that cattle may be reluctant to use cattle passes constructed across or under the railroad, especially those that are used infrequently.”*** For the sake of accuracy, I would have you substitute the words “totally,” or “completely unwilling,” for the optimistically stated, “may be reluctant.” Further ***“This situation could increase herding time between pastures, but would not constitute a significant impact.”*** is completely insulting in its urban naiveté and casts doubt on any of the writers of the EIS to have the slightest inkling of the railroad’s impact on livestock operations or a basic understanding of the problems a railroad will present to ranchers bisected, severed and isolated by its construction and operation! For the sake of your own credibility I implore you to completely rewrite this offensive and ignorant assumption.

On Page 4-66 Range Fires are addressed. Again, as I have testified before, your attempt to minimize the potential for railroad-caused fires is misguided and, in the case of the TRR, unfortunate. I have been an unpaid volunteer for the Rosebud County Fire

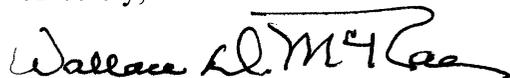
Department for over twenty years and, therefore have had a great deal of experience with fires in the area to be traversed by the TRR. While I have no disagreement with the statistics on range fires from the MT DSL, I am convinced the potential for railroad-caused fires is much greater for the TRR than for most of the railroads in Montana. Most railroads in the state are much differently situated than the TRR in that they lie between a river, irrigated fields, and paved highways. Roads, irrigated lands and rivers serve as barriers to the spread of fires. The location of the proposed ROW has none of these insulating barriers on the most dangerous side of the ROW—which crowds the steep, bluffs rimming the valley floor with none of the barriers which exist beside most other state railroads. The Tongue River area is climatically dryer than many regions of the State. In addition, the placement of the railroad and the time required for local fire fighters to respond due to the low population density contributes to delay in seeing and reporting a fire and the distance fire responders must travel, suggests resulting fires will be larger than the typical railroad-related fires averaging 90 acres.

I believe there is an error in Table 4-49 where it is indicated the Rosebud Elementary District will show an increase in taxable valuation. I don't think that any of the TRR route will be located in the Rosebud Elementary District.

I did not find an "alternatives analysis" for crossing state lands, as required by MEPA in Appendix F as the EIS indicates on Page 5-10.

The Tongue River Railroad has been hanging fire for over a quarter of a century. I first heard about it in 1968. As reiterated time, and time again by ranchers in the Tongue River valley, and others, we have been forced to deal with the threat of the TRR's construction and operation for far too long. The TRR seems to have a permit in perpetuity that stretches the credibility of their endless claims that there is a *NEED* for the project. How long is the once ICC, and the now STB, going to continue to indulge every incremental whim of this fly-by-night, constantly changing, nonsensical, unneeded pipe dream to continue? In 1996, the ICC made an attempt to end this endless charade by imposing a deadline for the completion of the railroad. This deadline was placed because the individual who has single-handedly pushed this project for years, told the ICC that if the board approved entire (new) proposed route, he would personally guarantee that the entire railroad would be completed, and in operation, in three years. In 1999 the STB Board rescinded the ruling to place a time limit on the construction. I beg the STB to put an end to the uncertainty that has been imposed upon us by placing a deadline, once again, on the never-ending merry go round that this ill-conceived project has become.

Sincerely,

A handwritten signature in black ink that reads "Wallace D. McRae". The signature is written in a cursive, somewhat stylized font.

Wallace D. McRae, President
Rocker Six Cattle Company