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**TONGUE RIVER RAILROAD**  
**TRANSCRIPT OF PUBLIC MEETING**

**November 16, 2004**  
**7:00 p.m.**

Miles City Community College  
Room 106  
2715 Dickerson  
Miles City, MT 59301

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Appearing for the Surface Transportation Board:

Ken Blodgett  
Environmental Protection Specialist  
Surface Transportation Board  
Section of Environmental Analysis  
1925 K Street NW, Suite 500  
Washington, DC 20423

Appearing for Public Affairs Management:

Scott Steinwert  
Planner

and

Cara Naiditch  
Assistant Planner  
Environmental Planning  
135 Main Street, Suite 1600  
San Francisco, CA 94105  
(415) 227-1100  
c.naiditch@pamsf.com

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

(406) 346-7310

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

\* \* \*

MR. BLODGETT: My name is Ken Blodgett and I  
want to thank you all for coming tonight. I work as  
an Environmental Protection Specialist at the Surface  
Transportation Board in the Section of Environmental  
Analysis in Washington.

I'm pleased to be here with you tonight and  
I look forward to hearing your comments. The purpose  
of tonight's meeting is for us to hear comments on the  
Draft Supplemental Environmental Impact Statement  
titled Tongue River Railroad Company's Proposed  
Construction and Operation of the Western Alignment in  
Rosebud and Big Horn Counties, Montana, Finance Docket  
30186 (Sub-No. 3).

This document was served on parties of  
record and made available to the public on  
October 15<sup>th</sup>, 2004.

Before we begin hearing oral comments  
tonight, I wanted to take a few minutes to briefly  
discuss the Surface Transportation Board and its role  
in regulating railroad matters, and the Section of  
Environmental Analysis' environmental review process.

Following that we'll again discuss briefly

1 the Draft document and the environmental analysis that  
2 went into the preparation of the draft document.

3 And then at that time we'll begin taking  
4 oral comments from the audience.

5 I wanted to emphasize that for those people  
6 that choose not to make an oral comment we have  
7 comment cards back at the sign-in desk that you're  
8 welcome to write any comments on there tonight and  
9 turn them into us this evening. There is an address  
10 on there where you can mail your comments and there's  
11 also a web address where you can go onto a website and  
12 file your comments electronically. So any of those  
13 means of commenting are good. We just would like to  
14 get your comments by December 6<sup>th</sup>. That's the end of  
15 the comment period.

16 The Surface Transportation Board is --  
17 hello?

18 MR. STEINWERT: Try this one. (Referring to  
19 a different microphone.)

20 MR. BLODGETT: Can you hear me now?

21 AUDIENCE: (Positive indication.)

22 MR. BLODGETT: The Surface Transportation  
23 Board is a nonpartisan, independent Federal regulatory  
24 body which is housed organizationally within the  
25 United States Department of Transportation.

1           The Board is responsible for the economic  
2 regulation of interstate surface transportation,  
3 primarily railroads, in the United States. The Board  
4 has jurisdiction over rail related activities such as  
5 railroad construction projects.

6           The Board was established by the Interstate  
7 Commerce Commission's Termination Act of 1995, and  
8 basically the ICC Termination Act established the  
9 Board in order to assume some of the regulatory  
10 responsibilities that had formerly been carried out by  
11 the Interstate Commerce Commission.

12           The Board is charged with providing an  
13 efficient and effective forum for the resolution of  
14 disputes within its jurisdiction and to ensure the  
15 competitive, efficient, and safe transportation  
16 services to meet the needs of shippers, receivers, and  
17 consumers.

18           In all of its decisions the Board is  
19 committed to furthering the National Transportation  
20 Policy Goals established by Congress. The Surface  
21 Transportation Board is composed of three Board  
22 Members, each of which is appointed for a five-year  
23 term. Those Board Members are appointed by the  
24 President and confirmed by the Senate. And the  
25 President of the United States designates the Chairman

1 of the Board.

2           The Section of Environmental Analysis is the  
3 office within the Surface Transportation Board which  
4 is responsible for ensuring that the requirements of  
5 the National Environmental Policy Act are fulfilled.  
6 And we fulfill those requirements through the  
7 independent environmental review of railroad actions  
8 which require Board approval. Typically we prepare  
9 environmental documentation which examines the  
10 environmental impacts of a proposed action and  
11 recommend mitigation to try to lessen the  
12 environmental impact.

13           The Board's Rules implementing the National  
14 Environmental Policy Act can be found at 49 CFR,  
15 Section 1105 in the Code of Federal Regulations.

16           In order to expedite the environmental  
17 review process at the Board, we encourage the  
18 applicants to retain an independent third-party  
19 consultant to work with us during the preparation of  
20 any environmental documentation, in this case the  
21 Draft Supplemental EIS. Tongue River Railroad  
22 selected Public Affairs Management in this instance.  
23 And with our approval, we've been working with Public  
24 Affairs Management in the preparation and  
25 environmental review of the Proposed Western

1 Alignment. So a third-party consultant works under  
2 our direct control and supervision throughout the  
3 environmental review process. There are two staff  
4 members of Public Affairs Management here tonight;  
5 Scott Steinwert, who you'll be hearing from shortly,  
6 and Cara Naiditch, who is in the back of the room  
7 helping people as they come into the room.

8           Routinely in preparing an environmental  
9 document like this we consult with cooperating  
10 agencies, other federal agencies or state and local  
11 environmental agencies. In this construction project  
12 we worked closely with three cooperating agencies that  
13 helped us in the preparation and the review of the  
14 draft document. And those three cooperating agencies  
15 were the U.S. Army Corp of Engineers, the U.S. Bureau  
16 of Land Management, and the Montana Department of  
17 Natural Resources and Conservation, which acted as the  
18 lead agency to coordinate for all the other state  
19 agencies.

20           These three agencies have decision making  
21 authority which is independent of the Board's  
22 authority and are three principal agencies from which  
23 the railroad will need to obtain separate approvals or  
24 permits prior to construction. In order to avoid  
25 duplicative environmental analysis, the draft document

1 includes environmental reviews specifically requested  
2 by these three cooperating agencies, which should  
3 facilitate and expedite their environmental review  
4 process and speed up their issuance of any necessary  
5 approvals.

6           The NEPA process, the National Environmental  
7 Policy Act process is a public process, and public  
8 involvement is essential for the process to work  
9 properly. Public participation is especially  
10 important in the areas of environmental mitigation.  
11 All of our documents are served on the public for  
12 review and comment. And at the end of the comment  
13 period the Section of Environmental Analysis will  
14 consider all comments received and perform any  
15 additional environmental analysis that is warranted  
16 based on the comments which we have received. We then  
17 prepare a Final Environmental Impact Statement which  
18 addresses those comments. The Final Environmental  
19 Impact Statement will conclude our final recommended  
20 mitigation measures and our Final Environmental  
21 Analysis. The Final Supplemental EIS will be served  
22 on all parties of record and made available to the  
23 public.

24           The Board then will consider the entire  
25 environmental record, the Draft, both draft documents,

1 and all the public comments which we have received in  
2 making its Final Written Decision on Tongue River  
3 Railroad's Application.

4 In addition to considering the environmental  
5 record the Board will also consider any economic and  
6 competitive transportation issues relevant to the  
7 application.

8 The Board's Final Decision will include any  
9 conditions, environmental conditions which it deems  
10 appropriate.

11 I just want to real briefly go over the  
12 history of Tongue River and its applications that have  
13 come before the Board over the years.

14 The first application was filed in 1983 with  
15 what was then the Interstate Commerce Commission. A  
16 Draft, and that was referred to as Finance Docket  
17 30186 (Sub-No. 1), or just Tongue River I, and that  
18 was for eighty-nine (89) miles of construction between  
19 Miles City and Ashland, Montana.

20 A Draft EIS was served in July of '83, which  
21 examined the Railroad's preferred alignment, three  
22 alternative alignments, and the no-build alternative.

23 A Supplement was served in January of '84  
24 and the Final EIS was served in August of '85.

25 Following that the Interstate Commerce

1 Commission approved the Tongue River I construction by  
2 the Railroad's preferred alignment and a Final  
3 Decision served in May of '86.

4 In 1989 Tongue River notified the Interstate  
5 Commerce Commission of its intent to file an  
6 application extending the line that had been approved  
7 in Tongue River I for an additional forty-one (41)  
8 miles from Ashland to Decker. This was 30186 (Sub-No.  
9 2), or Tongue River II, and in July of 1992 a Draft  
10 Environmental Impact Statement was served on the  
11 public for review, which examined the preferred  
12 alignment, a no-build alternative, and a Four Mile  
13 Creek Alternative.

14 In the Draft EIS the Section of  
15 Environmental Analysis determined that the Four Mile  
16 Creek Alternative was the environmentally preferable  
17 alternative because it avoided an environmentally  
18 sensitive ten-mile stretch of the Tongue River known  
19 as the Tongue River Canyon. It eliminated the need  
20 for five bridges and one tunnel, and it also avoided  
21 the Tongue River Reservoir State Recreation Area.

22 There was a Supplement to the EIS issued in  
23 March of '94. And in April of '96 a Final EIS was  
24 served stating that this Four Mile Creek Alternative  
25 would be the environmentally preferable alternative.

1           The Board issued a Decision in November '96  
2 approving Tongue River II via the Four Mile Creek  
3 Alternative.

4           In April 1998 Tongue River filed an  
5 application for authority to construct an alternative  
6 17.3-mile routing of the southernmost portion of the  
7 Tongue River II route that had been previously  
8 approved by the Board. This 17.3-mile alternative is  
9 referred to as the Western Alignment and it initiated  
10 the Tongue River III proceeding.

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

16           The Section of Environmental Analysis  
17 determined that a Supplemental EIS was the appropriate  
18 means of reviewing the application, and in February of  
19 '99 a Final Scope was published and environmental  
20 review proceeded.

21           In March of 2000, at the applicant's  
22 request, environmental work was suspended and then it  
23 was picked up again in January of 2003 when the  
24 railroad requested permission to submit supplemental  
25 evidence to the application, the 1998 Tongue River III

1 application. So at that time we issued an Amended  
2 Notice of Intent to Prepare Supplement and requested  
3 any additional information which the public might be  
4 able to inform us of regarding changed circumstances  
5 that we should be made aware of, and we proceeded with  
6 our environmental review. And that's what's led us to  
7 the issuance of this Draft Supplemental EIS in October  
8 of 2004.

9 So that concludes my remarks on the history  
10 of this project and our agency, and I'm going to turn  
11 the floor over to Scott Steinwert of Public Affairs  
12 Management to discuss a little bit about the  
13 environmental analysis that was conducted in this  
14 document.

15 MR. STEINWERT: Thanks Ken. I'll try to be  
16 very brief. Good evening everybody. I'm going to  
17 give you an overview of the Reports we've prepared,  
18 how we did them, and what our basic findings are.  
19 I'll try to do all that in a few minutes.

20 For those of you who may not be aware of the  
21 Draft Supplemental Environmental Impact Statement,  
22 it's contained in two separate volumes, Volumes I and  
23 II, and there are a couple copies of the books up here  
24 in the front. If you don't have them or haven't had a  
25 chance to look at them, you can look at them here

1 tonight.

2           Volume I contains the -- is the EIS itself.  
3 Volume II contains all the appendices, which contains  
4 all the technical studies, the background information  
5 that we relied on to conduct our analysis.

6           In Volume I there are fourteen (14) separate  
7 chapters. The bulk of the analysis of the Western  
8 Alignment and the modifications to the rail line that  
9 Tongue River has proposed on the remainder of the  
10 Alignment are contained in Chapters 4 and 5.

11           Chapter 4 contains a detailed analysis of  
12 the Proposed Western Alignment, compares the impacts  
13 of the Western Alignment to the approved Four Mile  
14 Creek Alternative. And in doing that analysis we  
15 studied twelve (12) different topic areas, including  
16 land use, biological resources. We looked at soils  
17 and geology impacts, hydrology and water quality,  
18 cultural resources, transportation and safety, air  
19 quality, noise and vibration impacts, socioeconomic  
20 issues, recreation, aesthetics and energy.

21           Our analysis basically concluded that both  
22 the Western Alignment and the Four Mile Creek  
23 Alternative can be operated, both can be operated  
24 safely, and that both of them, as Ken has said, would  
25 avoid the most sensitive parts of the Tongue River

1 Canyon, and that the impacts of both Alignments are  
2 generally comparable. However, our analysis concluded  
3 that the Western Alignment would be the  
4 environmentally preferable of the two alternatives.  
5 And the reasons we came to that conclusion are as  
6 follows:

7           The Western Alignment has fewer at-grade  
8 road crossings. It has four versus seven that would  
9 have to be constructed with the Four Mile Creek  
10 Alternative. It has a flatter grade, which over the  
11 life of the rail line would result in less frequent or  
12 less possible train derailments. The flatter grade  
13 would also require less fuel to operate the trains,  
14 which results in less air emissions as well. There  
15 is, because of its shorter distance, there would be  
16 less overall total acreage that would be affected by  
17 the rail line construction. There would also be  
18 substantially less wetlands affected by or filled in  
19 by the Western Alignment, 1.69 acres versus 6.09 acres  
20 with the Four Mile Creek Alternative. And, finally,  
21 the Western Alignment would affect fewer noise  
22 sensitive receptors, that's residences or homes along  
23 the Alignment. Along the Western Alignment there are  
24 zero or no homes, and along the Four Mile Creek  
25 Alternative there are five residences that would be

1 possibly affected by train noise.

2           We did, however, note in here that the  
3 Western Alignment does require more grading and earth  
4 work to be constructed. It goes over different types  
5 of topography that would require more grading. And,  
6 as a result, it has the potential to have more  
7 significant soil erosion sedimentation loads to the  
8 Tongue River, and dust and visual quality effects  
9 during construction. And we've proposed mitigation  
10 measures to address those issues as well.

11           As part of our analysis one of the things we  
12 also did at the request of the Board was to go back  
13 through all of Tongue River I and Tongue River II, all  
14 the mitigation measures and update them to reflect the  
15 most recent state of the art, if you will, in terms of  
16 mitigation practices and technologies that are  
17 available to mitigate sedimentation, erosion issues,  
18 biological impacts, and also to reflect the Board's  
19 most current practices in implementing mitigation  
20 measures.

21           In Chapter 7 of this Report is a compilation  
22 of all those mitigation measures. There are eighty-  
23 nine (89) total mitigation measures that we've  
24 compiled for the project. And as part of this  
25 analysis we're also recommending that those mitigation

1 measures that have been updated be applied to the  
2 entire construction of the rail line from Miles City  
3 to Decker.

4           And, with that, I'll turn it back over to  
5 Ken.

6           MR. BLODGETT: Okay. And, with that, we're  
7 ready to start receiving oral comments from the  
8 audience. We'll try to -- As you came in we asked  
9 those that were interested in speaking to somehow mark  
10 next to their name, so that's what I'll be using as I  
11 call names. I'll call -- As I call one name I'll call  
12 the next person that looks like they're in line to be  
13 the speaker so they know to start getting themselves  
14 together.

15           What we'll ask you to do is come up to the  
16 podium. We do have a court reporter here tonight so  
17 she will ask -- so we'd ask that you first of all  
18 state your name for the record. But we have a court  
19 reporter to make sure that we accurately capture all  
20 of your comments. And the transcript of this will be  
21 made available to the public later on our website, or  
22 if you need to figure out how to find it you can  
23 contact me, but it should be available on our website.

24           Our purpose this evening is to hear your  
25 comments on this Draft Supplemental Environmental

1 Impact Statement, so I would ask that you try to focus  
2 your comments on this Environmental Analysis. Because  
3 there's a fair number of people that have expressed an  
4 interest in speaking, I'd also ask that you try to  
5 limit your time to maybe about three minutes. And if  
6 you can't say everything you want to say in three  
7 minutes, when everybody has had a chance to speak once  
8 we can go around the room and let everybody speak  
9 again. And if there are people that haven't marked  
10 the sheets and would like to speak, after we've gone  
11 through everybody that's indicated their desire to  
12 speak we can take comments from anybody else who has  
13 changed their mind and decided to speak.

14           Again, I want to reiterate that there are  
15 other ways of commenting besides speaking orally  
16 tonight and that would be in writing. And the  
17 information on how to submit written comments is  
18 available here tonight, and we've got forms handy and  
19 you can fill them in and hand them to us this evening  
20 or you can even do it electronically on the web.

21           So, with all that said, we'll begin taking  
22 oral comments. And the first person is a Dena Hoff.

23           MS. DENA HOFF: I would concede my time and  
24 I'll send in written comments.

25           MR. BLODGETT: Okay. The next person is

1 Neal Shelton. And following Neal Shelton will be  
2 Terry Hanson.

3 MR. STEINWERT: Can we give them this  
4 microphone?

5 MR. BLODGETT: Sure.

6 MR. STEINWERT: If you could use the  
7 handheld microphone to speak into and that way  
8 everyone can hear you. And the other microphone is  
9 for the court reporter so she can hear your testimony  
10 as well.

11 **ORAL COMMENT**

12 BY MR. NEAL SHELTON: Just a brief  
13 background of myself. I'm Neal Shelton. I have lived  
14 in the Forsyth/Rosebud area for about, well, it's  
15 almost thirty (30) years. I'm an engineer for the  
16 railroad. I have literally hauled millions of tons of  
17 coal, both from Montana and Wyoming coal.

18 I would like to kind of add a little bit on  
19 Montana coal. There are only four coal mines in  
20 Montana that are currently operating, and that's  
21 Decker and Sarpy Creek and Spring Creek. And the only  
22 advantage that they really have is that we're closer  
23 to the market, being Minnesota. If they build this  
24 railroad it will actually shorten that route and it  
25 will actually help more of the Wyoming market. So

1 this really wouldn't help Montana's coal. It would  
2 actually hurt Montana's coal. In fact, I believe it  
3 would shut Montana coal down.

4 If you look on this Volume I there is a map.  
5 They don't really have pages on here but it's 2 -- 3.  
6 And it kind of shows a little bit of the route that is  
7 currently being run on the railroad and how much it  
8 would cut that off. I think it cuts off like 230  
9 miles of route. And that, in itself, would really  
10 endanger Montana coal.

11 The one thing that -- Wyoming coal, they  
12 have thirty (30) feet of overburden and about eighty  
13 (80) feet of coal. In Montana, our coal, we have  
14 about eighty (80) feet of overburden and about thirty  
15 (30) feet of coal. So Montana coal is more expensive  
16 to mine than Wyoming coal. The only advantages that  
17 we have is that we're closer to the market. And I  
18 think that people need to see that.

19 MR. BLODGETT: Thank you. The next person  
20 would be Terry Hanson.

21 **ORAL COMMENT**

22 BY MR. TERRY HANSON: I don't know if I need  
23 to talk to this group or this group. (Referring to  
24 the audience and the panel.)

25 MR. BLODGETT: Well, we had intended for you

1 to face us, but this is fine.

2 MR. TERRY HANSON: Well, that's what I was  
3 thinking. I want to talk to you guys because you guys  
4 are the ones that are actually in control of this.

5 MR. BLODGETT: And following Mr. Hanson will  
6 be Art Hayes, Jr.

7 MR. TERRY HANSON: This {microphone} doesn't  
8 work here?

9 MR. BLODGETT: That's just generally for the  
10 court reporter so that she gets it.

11 MR. TERRY HANSON: Oh, okay. My name is  
12 Terry Hanson. I'm from Miles City. I practice law in  
13 Miles City.

14 About twenty-five (25) years ago I was an  
15 attorney for the Public Service Commission so I've had  
16 some experience with the term public need and  
17 necessity, which is the basis and which should be the  
18 standard that you people are dealing with.

19 I've jotted down a couple of notes. One of  
20 the things I always note is that you call these  
21 finance dockets. This connotes that the prime  
22 consideration is financial. In other words, it's  
23 dollars, not environmental or the quality of life in  
24 the Tongue River Valley. We live in the Tongue River  
25 Valley and we enjoy it.

1           And the other thing I have, a question I  
2 have is just who is the applicant here? Who are these  
3 people, the Tongue River Railroad Company? This thing  
4 has been going on, as far as I know I think the first  
5 application for the Tongue River Railroad was  
6 somewhere around a hundred years ago, and there still  
7 is no Tongue River Railroad. I would like to know  
8 what the basis of their claim is, the claim for public  
9 need and necessity. There is other transportation  
10 available presently which should be taken into  
11 account, and which the previous fellow just spoke  
12 about. And I don't believe that that's been  
13 considered sufficiently.

14           As far as I can tell, this railroad has been  
15 permitted now for eight years, since 1996, yet the  
16 company has been free to obtain right-of-ways and  
17 begin construction during those eight years, they  
18 haven't done anything as far as I can tell. All  
19 they've done is use this scheme to obtain money from  
20 investors. While they're doing this our ranchers live  
21 under the shadow and the threat of a railroad that's  
22 going to adversely impact their ranches, their farms,  
23 their grasslands. It's not fair. If they were going  
24 to do this they should have already been started,  
25 already started doing it.



1 your map, in your 1998 proposed refinements, when we  
2 were asked to meet under the threat of condemnation in  
3 about 1998 my family and I met with the Tongue River  
4 Railroad representatives. And if you'll look there  
5 you'll see that the railroad has changed a lot from  
6 the original 1985 route. We asked them, 'how can you  
7 condemn us if you don't have a permitted route?' We  
8 were told that they were given a mile-wide corridor by  
9 the Surface Transportation Board. We asked for  
10 documentation and we kept asking for documentation.  
11 We never received that documentation that they had  
12 that mile-wide corridor.

13           Why are we submitted to this? This has been  
14 a cloud on our title for twenty (20) years. The  
15 railroad has had more partners than Elizabeth Taylor  
16 has had husbands, yet the scheme keeps going on.

17           I really feel that this is not a viable  
18 thing. If it was, it would've been built. There is  
19 no need, no nothing.

20           I was brought to the attention in the  
21 Environmental Impact Statement that they could  
22 purchase water from the Tongue River Water Users  
23 Association. As President, I would like to inform the  
24 Surface Transportation Board that we deal only in  
25 agricultural water, not industrial. So there will be

1 no water available from the Tongue River Water Users  
2 Association for purchase.

3 Also, much of the data in this is old and  
4 stale, its original data gathered in the 1980s. A lot  
5 has changed and I think it should be recollected.

6 And also I would like to ask, due to the  
7 volumes, the large volume of material to review, I  
8 think it should be extended, the comment period should  
9 be extended for at least another forty (40) or ninety  
10 (90) days.

11 But it's a scheme, and when is the Surface  
12 Transportation Board going to look at it?

13 Thank you.

14 MR. BLODGETT: Thank you for your comments.  
15 Mr. Mark Fix, followed by Deborah Hanson. Thank you.

16 **ORAL COMMENT**

17 BY MR. MARK FIX: I'm Mark Fix and I'm a  
18 rancher on the Tongue River that will be crossed by  
19 the Proposed Tongue River Railroad. I sit on the  
20 Board to the Northern Plains Resource Council, a  
21 grassroots conservation and family agriculture  
22 organization. Northern Plains organizes Montana  
23 citizens to protect water quality, family farms and  
24 ranches, and our unique quality of life.

25 Before I start with my testimony, I would

1 like to tell you all a story about a recent experience  
2 with the Surface Transportation Board. I traveled to  
3 Washington, DC over a year ago to discuss impacts of  
4 coal bed methane with lawmakers. It was the first  
5 time I had ever been to Washington, DC. I had some  
6 spare time and wanted to go and talk with Dana White  
7 in the Surface Transportation Board Office. I was  
8 told that I could not meet with Dana because it was  
9 considered *ex parte* communication. I'm not a lawyer  
10 and I had no intention of discussing items relating to  
11 the Northern Plains' lawsuit related to the Railroad.  
12 I thought the Surface Transportation Board was  
13 supposed to be a public agency, and I was frustrated  
14 that I was not allowed access to people within the  
15 office.

16 I guess this is my only chance to let the  
17 Surface Transportation Board know what I think about  
18 the Railroad, so I'd better make it good.

19 I will be presenting official testimony for  
20 the Northern Plains Resource Council and myself. We  
21 will both provide more detailed comments before the  
22 December 6<sup>th</sup> comment deadline.

23 Let me say up-front that Northern Plains and  
24 I personally oppose the Tongue River Railroad for  
25 three very simple reasons. It's unnecessary. The

1 railroad would service coal operations that are  
2 already serviced by other railroads. Both Decker and  
3 Spring Creek have rail access already. It would  
4 dissolve Montana's competitive advantage. The  
5 railroad would take away a competitive advantage  
6 currently enjoyed by coal mines in Colstrip by  
7 shortening the distance to Midwest markets for  
8 Gillette coal.

9           As my friend and fellow rancher Art Hayes,  
10 Jr. is fond of saying, the Tongue River Railroad would  
11 be Montana's biggest gift to Wyoming.

12           Finally, we oppose this railroad because it  
13 would turn the Tongue River Valley into an industrial  
14 zone. It would destroy farm and ranch land,  
15 contribute to the spread of weeds, burden ranchers  
16 with cumbersome and dangerous railroad crossings, cut  
17 livestock off from water sources or pastures, and  
18 destroy the peace and quiet that those of us who farm  
19 and ranch in the area enjoy. It would be one thing to  
20 accept those kinds of impacts if we knew that the  
21 railroad actually served some sort of public good.  
22 Instead, as I said before, it services coal operations  
23 already served by other railroads and actually takes  
24 away a competitive advantage for coal mines in  
25 Colstrip.



1 another mine and maybe lots of coal generators using  
2 water which we have very little of out here. So I  
3 consider this sort of the impossible dream for an  
4 unnecessary railroad.

5           It would also open up Wyoming coal and take  
6 away our competitiveness, and I don't see how that  
7 could be of any benefit to eastern Montana.

8           But referring actually to this EIS I want to  
9 once again say a lot of the information in there is  
10 based on old information twenty-five (25) years ago.  
11 And we now have to look at more cumulative effects on  
12 things that are proposed for out there like these --  
13 the coal bed methane wells. They are proposing  
14 thousands of them, which will also be affecting our  
15 aquifers in our river. And on top of that, if we put  
16 this branch in and it causes greater erosion we are  
17 putting more sediment into the river.

18           And we have -- this is a very viable  
19 agricultural river. We have a great many neighbors  
20 here that contribute to our economy through the  
21 irrigation and the raising of animals.

22           So I would hope that you will take a trip  
23 down that Tongue River Valley and that you will  
24 consider this when you're making your decisions.

25           Thank you.

1 MR. BLODGETT: Tom McKerlick, to be followed  
2 by Mr. Jack Regan.

3 **ORAL COMMENT**

4 BY MR. TOM MCKERLICK: I'm Tom McKerlick  
5 with the Miles City Area Economical Development  
6 Council, 511 Pleasant Street. Our Miles City Area  
7 Economic Development Council is in support of this  
8 Draft Environmental Impact Statement. We feel like  
9 you've done a real good job of improving on something  
10 that was already in place.

11 My understanding is that the railroad is  
12 currently allowed to go in the way the original EISs  
13 were set up, and so this is just an improvement upon  
14 the southern portion of it. It's got less  
15 environmental impact, improved grades for rail  
16 traffic, and you've looked at remediation factors,  
17 mitigation factors along the whole length of the  
18 railroad, which to me seems it will be an improvement  
19 of the whole route.

20 People are wondering about the reason for a  
21 railroad like this. We have a lot of reasons. We  
22 have about 500 to 600 million tons of high grade coal  
23 in the area of Ashland that's owned by the State of  
24 Montana. This would be the first step. The  
25 initiation of this railroad would be the first step of

1 accessing all these coal reserves.

2 I would also be available if and when the  
3 Cheyenne Reservation is ready to develop their coal  
4 and their resources, and they're talking about that.

5 It would also service Decker and would  
6 service Spring Creek; could service them.

7 It seems to be a benefit to the whole area.  
8 We here in eastern Montana have an economy based  
9 largely on livestock and grains, and we're having a  
10 lot of trouble supporting our city governments, our  
11 county governments, really bringing projects to bear  
12 the tax base and jobs to keep our people in the state.  
13 We've lost about 30 percent of our population in the  
14 counties around Custer here over the last twenty-five,  
15 thirty (25/30) years, so we've seen our people  
16 leaving.

17 People in Montana want to bring their  
18 children back. You know, this is an opportunity.  
19 This railroad and the development of those coal  
20 reserves can provide some really top rate jobs,  
21 \$45,000.00 to \$55,000.00 per job. And just on the  
22 basis of the railroad and the mine we're talking about  
23 270 permanent jobs. And if we put in the  
24 installation, the power plant installation, that could  
25 be -- that we're calling pie in the sky here -- if we

1 put that in, and it's over a 4 billion-dollar  
2 investment, property taxes alone would be in excess of  
3 80 million dollars per year.

4 We look at surrounding counties around  
5 Custer and I think the only ones that are performing  
6 well are those that are developing their natural  
7 resources. We're talking about Richland County.  
8 We're talking about the Baker area. We're talking  
9 about Rosebud County. So the only ones that are  
10 performing well in eastern Montana are based -- have a  
11 natural resource base.

12 So I just think this is an opportunity. And  
13 maybe this railroad was not necessary before, but it  
14 surely is now. The development of these coal reserves  
15 will make it work.

16 Thank you.

17 MR. BLODGETT: Thank you. Mr. Jack Regan,  
18 and he'll be followed by Rex, I believe it's Mongold.

19 AUDIENCE PARTICIPANT: He'll pass. He's  
20 gone home.

21 MR. BLODGETT: Okay. Well then the next one  
22 after that would be Mr. David Simpson.

23 **ORAL COMMENT**

24 BY MR. JACK REGAN: I'm Jack Regan. I'm the  
25 Superintendent of Schools for the Miles City School

1 District and the School District. It's my  
2 responsibility as far as the financial well-being,  
3 etcetera, of the whole district, we are in support of  
4 the Tongue River Railroad, the new Environmental  
5 Impact Statement. It's just a flat out necessity for  
6 the school districts.

7           As you know, the school districts in the  
8 state of Montana, and especially in eastern Montana,  
9 are in dire straits financially because of declining  
10 enrollment and the lack of state funding. With  
11 something like the Tongue River Railroad, possibly the  
12 Otter Creek Coal Mine, which is, being state-owned,  
13 has very much, millions of dollars to go into the  
14 school trust fund. With buildings that are eighty-  
15 plus years old and not the bonding capacity to do  
16 anything about it, with losing A and B payments, it  
17 seems to the school district that it's a win situation  
18 in which we can reduce the tax burden on our local  
19 taxpayers in Miles City and Custer County and the  
20 surrounding counties and significantly help our  
21 school, help our schools.

22           It's a way to keep our students in Montana  
23 instead of losing them out-of-state consistently.  
24 It's a way to attract new teachers with incentives and  
25 so forth and be able to give our kids the best

1 education possible. And without some type of economic  
2 development in and around Miles City and this area,  
3 that's going to be a situation that just won't happen.  
4 We'll keep declining and our schools will be in  
5 disarray and we will not be able to attract good  
6 teachers. Our students will leave the state.

7 I was at a meeting where the Tongue River  
8 Railroad was discussed with County Commissioners, and  
9 they said it would increase our tax base by more than  
10 a third, just in Custer County alone. The annual  
11 taxes collected for the whole school districts in the  
12 Tongue River area would be approximately 2.5 million  
13 dollars annually, 38 million over a fifteen-year  
14 period. It would be a way for us to get out of the  
15 deep pit that we're in right now in education in the  
16 state of Montana. It would help not only Miles City  
17 and Custer County and the surrounding counties, but  
18 the entire state.

19 Thank you.

20 MR. BLODGETT: Mr. Simpson, and he will be  
21 followed by Duane Mathison.

22 **ORAL COMMENT**

23 BY MR. DAVID SIMPSON: Thank you. I don't  
24 feel comfortable with my back to the crowd here. My  
25 name is David Simpson. I'm Vice President of

1 Westmoreland Mining, a subsidiary of Westmoreland Coal  
2 Company.

3           Just to tell you a little bit about who we  
4 are -- a bunch of you probably know -- we have  
5 operated through our subsidiary, Westmoreland  
6 Resources, and incorporated the Absaloca Mine at Sarpy  
7 Creek since the early 1970s. Recently we purchased  
8 the Rosebud Mine at Colstrip, Western Energy Company,  
9 from Montana Power. Also, we own the Savage Mine at  
10 Savage, Montana. It's a small late-night mine that  
11 supplies a local market at Sidney.

12           Westmoreland Coal Company has made a large  
13 investment in its coal mines in Montana, and we  
14 support development of energy resources in eastern  
15 Montana that's economically viable. And we hope to be  
16 a player in that market going -- or in that activity  
17 going forward.

18           And from that standpoint, I guess our view  
19 of the Tongue River Railroad is that Tongue River I,  
20 that is the section from Miles City to Ashland, would  
21 make sense, will make sense if and when the Otter  
22 Creek deposits are economically viable in the market.  
23 Right now we have our doubts about that, but we're  
24 going to take a look at it and make our own  
25 determination going forward as to just whether those

1 coal reserves fit in the marketplace.

2 As several speakers have noted, the  
3 connection from Ashland to Decker however, is what  
4 causes us great concern, because it'll have the effect  
5 of providing access by a shorter rail distance,  
6 allowing mines in Wyoming to access markets  
7 traditionally supplied by Montana mines. And we are  
8 very concerned about that with our investment here in  
9 Montana.

10 We currently have a difficult time in  
11 Montana competing with the Wyoming mines because of  
12 taxes, mining conditions, and rail distance in a  
13 number of markets. And we feel that the Tongue River  
14 Railroad could result in substantial displacement of  
15 Montana coal by Wyoming coal.

16 The Draft EIS does not address the  
17 socioeconomic effects of such displacement,  
18 particularly with respect to losses in employment,  
19 royalty, and tax revenue. Both the Crow Tribe, which  
20 owns the coal reserve at Sarpy Creek, and the State of  
21 Montana would be impacted by losses and sales at the  
22 other mines.

23 I guess I'd leave you with one question from  
24 the standpoint of those of us in Montana, and that is  
25 -- and this is with respect to the Western Alignment

1 -- why should Montana absorb the environmental impacts  
2 of construction of the Tongue River Railroad in order  
3 to improve market access for Wyoming coal?

4 MR. BLODGETT: Mr. Mathison, and then the  
5 next one will be Doug Campbell.

6 **ORAL COMMENT**

7 BY MR. DUANE MATHISON: I'm Duane Mathison,  
8 a Custer County Commissioner, and I also farm along  
9 the Tongue River.

10 I strongly support the Western Alignment of  
11 the Proposed Tongue River Railroad. I see this  
12 Amendment as an improvement to the whole project, both  
13 in environmental concerns and from the rail use  
14 concerns.

15 A timely completion of the Proposed Tongue  
16 River Railroad and the development of the Otter Creek  
17 Coal tracts can create an economic boon in  
18 southeastern Montana. There will be filter cost to  
19 the state and throughout our school systems.

20 Coal sales and power generation create many  
21 well-paying jobs, provide significant tax base, and it  
22 should at least stabilize, if not improve, our eroding  
23 population base.

24 The completion of the Tongue River Railroad  
25 opens the door to this potential development bonanza.

1 I thank you for the opportunity to share  
2 this.

3 MR. BLODGETT: Thank you. Mr. Campbell, and  
4 he'll be followed by Bill Melnik.

5 **ORAL COMMENT**

6 BY MR. DOUG CAMPBELL: I guess this  
7 {microphone} is cordless so I can turn around and look  
8 at you.

9 I'm Doug Campbell. I ranch south of Miles  
10 City. I'm kind of a newcomer here. I've been here  
11 about seven-and-a-half years, but I've been interested  
12 in hearing about this railroad.

13 I see the railroads in this country,  
14 Montana, pick their problem. When I lived near Opheim  
15 we fought for quite awhile to retain a railroad, and  
16 here they're trying to get one in, which is quite  
17 controversial.

18 I'm opposed to the construction of the  
19 Tongue River Railroad because I feel it will seriously  
20 damage a beautiful, productive valley.

21 If however, approval for new construction is  
22 granted, the rail line should provide more local  
23 benefits in jobs and taxes. Part 2.1 of the Draft EIS  
24 states that the purpose of the Tongue River Railroad  
25 is for transport of coal. Provisions should require

1 Tongue River Railroad to haul other commodities in  
2 carload lots at competitive rates. Commodities should  
3 include agricultural products, such as grain being  
4 hauled out, and agricultural input, such as fertilizer  
5 being hauled in. However, any commodities hauled  
6 should be subject to prior review by landowners along  
7 the route.

8 MR. BLODGETT: Thank you. Mr. Melnik.

9 **ORAL COMMENT**

10 BY MR. BILL MELNIK: My name is Bill Melnik  
11 and I'm the City 1, or City Ward 1 City Council-person  
12 for the City of Miles City. And I'm representing the  
13 whole City Council this evening, and we're in support  
14 of the Tongue River Railroad of going forward, and for  
15 a couple of reasons.

16 Mainly, the City of Miles City's tax base  
17 has been very terrible. We have more expenses than  
18 what we have revenue coming in. And we feel that with  
19 the railroad coming through here and possibly the  
20 power plant being built that there is going to be a  
21 lot more money coming in, more people coming into  
22 Miles City. We're going to have a larger tax base.  
23 It's going to help us develop our infrastructure in  
24 Miles City, and serve the people more.

25 We feel with the railroad coming in also

1 that it's going to provide more jobs, it's going to  
2 provide more businesses coming into Miles City, and  
3 it's going to be a greater economic boon for us, and  
4 it's going to just be just a real breath of fresh air  
5 for Miles City and help us in a lot of different ways.

6 Thank you.

7 MR. BLODGETT: Did we have any additional  
8 people come in that wish to speak? Okay. That  
9 concludes the list of everybody that's --

10 AUDIENCE PARTICIPANT: (Later identified as  
11 Dean Seifert): Could I put in my five cents?

12 MR. BLODGETT: Sure. Anyone that wants to  
13 speak will be able to speak.

14 **ORAL COMMENT**

15 BY MR. DEAN SEIFERT: You all are about to  
16 get a big earful. My face is to the table and my back  
17 is to the wall, my God I bet I can eat you all.

18 MR. BLODGETT: Can you state your name,  
19 please?

20 MR. DEAN SEIFERT: Dean Seifert. I've been  
21 here sixteen (16) years. I used to work for a man by  
22 the name of Mr. William Nussy and Fred Wacker along  
23 the Tongue River.

24 And you people in Miles City need to be damn  
25 careful what you wish for. You can't handle your

1 high school drug problems now. What are you going to  
2 do when you get all that white trash, pink flamingo,  
3 tire swing stuff building the railroad, working in the  
4 mine, in the power plant, if you get all that stuff up  
5 here?

6           The other thing, you need to get a big dose  
7 of reality. This is a desert. This is the western  
8 northern great plains. We receive less than thirteen  
9 inches of rain a year. We qualify as a desert. We  
10 can barely grow grass. It takes forty acres to run a  
11 cow.

12           Tongue River water, under ideal conditions  
13 if you want to read the Lewis and Clark journals,  
14 wasn't even drinkable back in the 1800s. And you want  
15 to go through one of the few sections of Class II  
16 farmland in the state and you want to put a God damn  
17 railroad through it. Your main base of income and  
18 jobs in this part of the state is agriculture, period.  
19 Get over it.

20           If you do not like the declining population  
21 in Miles City, which it has not declined in the  
22 sixteen years I've been here, move to Gillette. See  
23 what they do with that expanding overnight population.

24           Now, before I quit, I'm going to pull a  
25 Charlie Russell. And this goes specifically to the

1 Miles City Chamber of Commerce. In 1924, two years  
2 before he died, they invited him to give a small  
3 speech at Great Falls Chamber of Commerce. And he was  
4 kind of a radical environmentalist. And Mr. Russell  
5 said at the conclusion of his speech; "If I had my  
6 way, the land would be as God made it and none of you  
7 sons-a-bitches would be here at all."

8 MR. BLODGETT: Thank you. And I would like  
9 to open the floor to anybody that didn't express their  
10 desire to provide a comment when they came in at this  
11 time. And then there are some people that I think  
12 wanted to -- had some more to say, that we'll open it  
13 up to them. Is there anybody that hasn't spoken yet  
14 that would like to provide an oral comment at this  
15 time?

16 AUDIENCE: (Negative response.)

17 MR. BLODGETT: Okay. How about, I know  
18 there was at least one gentleman that did speak that  
19 said he would like to say more later.

20 MR. MARK FIX: Yes.

21 MR. BLODGETT: And you're Mr. Fix?

22 MR. MARK FIX: Yeah.

23 MR. BLODGETT: Thank you.

24 **ADDITIONAL ORAL COMMENT**

25 BY MR. MARK FIX: And for the record again

1 I'm Mark Fix and I've got official testimony for  
2 Northern Plains.

3           We agree with the Section of the  
4 Environmental Analysis of the Surface Transportation  
5 Board that the development of the Otter Creek tracts  
6 is speculative and will probably not happen. We urge  
7 the Surface Transportation Board to reexamine the  
8 Financial Analysis provided by Tongue River Railroad  
9 because we believe the financial analysis included  
10 hauling Otter Creek coal. The Otter Creek coal is not  
11 developed. The income provided from Otter Creek coal  
12 should not be included in the analysis.

13           A few days ago I traveled down the Tongue  
14 River Canyon. I noticed that there are rock cliffs  
15 along the canyon and there does not appear to be much  
16 soil on top of the cliffs. I suspect that most of the  
17 Western Alignment is underlaid by this rock. If the  
18 seventeen million cubic yards of soil that needs to be  
19 moved consists primarily of rock, the cost estimates  
20 to build the Western Alignment are much lower than  
21 they should be. Where is the information from the  
22 geo-technical test that was done several years ago?  
23 Was there any geo-technical information given for the  
24 Western Alignment area?

25           We are concerned that construction of the

1 railroad could contribute to further degradation of  
2 the Tongue River. I've taken water samples at Miles  
3 City all this summer and the standard for salinity has  
4 been exceeded all summer. We believe that the  
5 addition of up to 10,600 tons of sediment per year  
6 into the Tongue River from the construction of the  
7 Western Alignment would cause an even greater  
8 exceedence of the salinity standard.

9 Northern Plains believes that degradation of  
10 the river is the result of coal bed methane  
11 development in Montana and Wyoming. There will be  
12 more development of methane in the future, and this,  
13 combined with the impacts caused by construction of  
14 the Tongue River Railroad, will very likely destroy  
15 our irrigated land along the river and drastically  
16 affect the fishery.

17 The EIS states that the suppression water  
18 may be purchased from Tongue River Water Users. This  
19 water is designated for agriculture use, and we only  
20 got 48 percent of the water, of the contract water  
21 from the Tongue River Water Users this year. I had to  
22 purchase some water from the Northern Cheyenne to  
23 irrigate my crops this year. Simply put, there is no  
24 additional water available.

25 According to the Draft, the total maximum

1 daily load (TMDL) done on the Tongue River, 300,000  
2 acre feet of water flow in the Tongue River per year  
3 compared to five-and-a-half million acre feet of water  
4 rights. The Tongue is over allocated already. It  
5 doesn't appear that information from the TMDL work on  
6 the Tongue River has been included in this EIS.

7 In summary, we believe that the Tongue River  
8 Railroad should not be built. We request the Service  
9 Transportation Board revoke the permit for the entire  
10 line due to the lack of diligence and need.

11 I thank you for the opportunity to comment  
12 and I will submit additional more in-depth comments  
13 before the deadline.

14 MR. BLODGETT: Thank you.

15 MR. FIX: Would you like these written  
16 comments now?

17 MR. BLODGETT: Sure. How about anybody else  
18 that would like to make a comment at this time?

19 Again, I would like to encourage everybody,  
20 that if you just don't want to make an oral comment we  
21 are happy to receive a comment in any form or fashion  
22 up until December 6<sup>th</sup>. We've provided you the  
23 information to send it to us in writing. And  
24 following the end of the comment period we will be  
25 summarizing the comments and determining what further



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 46 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  
17 \_\_\_\_\_  
Charlene A. Berdahl  
Official Court Reporter/Notary Public