United States Department of the Interior

OFFICE OF THE SECRETARY
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December 2, 2004

ER 04/797

Ms. Victoria Rutson, Chief
Section of Environmental Analysis
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Dear Ms. Rutson:

The U.S. Department of the Interior (Department) has reviewed the Draft Supplemental Environmental Impact Statement (DSEIS) for the Tongue River Railroad Company's (TRRC) proposed 17.3 mile rail line construction in Rosebud and Big Horn Counties, Montana, known as Tongue River III (also referred to as the proposed Western Alignment), and offers the following comments.

The Surface Transportation Board's (Board) Section of Environmental Analysis (SEA) previously submitted two related applications that were considered and approved by the Board and its predecessor agency, the Interstate Commerce Commission (ICC), in 1986 and 1996, respectively. The rail line proposed in these applications, known as Tongue River I and Tongue River II, would be located in Custer, Big Horn, Powder River, and Rosebud Counties. The proposed Western Alignment is an alternative routing for the southernmost portion of the 41-mile Ashland to Decker alignment approved in Tongue River II, known as the Four Mile Creek Alternative.

The DSEIS was prepared by SEA in cooperation with the U.S. Department of the Interior, Bureau of Land Management (BLM), the U.S. Army Corps of Engineers (Corps), and the Montana Department of Natural Resources and Conservation (DNRC), acting as lead agency for other Montana State agencies. Under the requirements of the NEPA, the Board is the lead agency for preparing the DSEIS. The BLM, Corps, and Montana DNRC are cooperating agencies.

General Comments:

The U.S. Fish and Wildlife Service (USFWS) has provided significant recommendations to the Tongue River Railroad Company through consultation over the past 20 years. Many of the

concerns have been addressed in the last two alternative routes, along with additional new mitigation. However, the USFWS believes that, regardless of the proposed alterations and mitigation, all negative impacts to the Tongue River Corridor cannot be avoided. The USFWS previously supported a no build alternative. However, although TRRC states that the proposed Western Alignment would avoid the environmentally sensitive Tongue River Canyon, it is still within the Tongue River Corridor. The Four Mile Creek alignment would avoid 10 miles of this very important reach of the Tongue River. In effect, the lower portion of the Four Mile Creek alignment and the upper section of the Western Alignment (where S566 crosses the Tongue River) may result in the lowest negative impacts to wildlife and federally listed species than either of those two alternatives. This includes avoiding three bald eagle nests and one bald eagle winter roost site.

Specific Comments:

Page 2-6, Table 2-4, row 3 - The number of locomotive engines for western alignment is shown as 2. However, many of the eastbound loaded coal trains passing through Miles City have 3 locomotives – wouldn't the out bound loaded trains on the western alignment also have 3 locomotives?

Page 3-3, lines 4-5: The USFWS will complete a biological opinion only if formal consultation is required. Formal consultation should be initiated by the Board if the project is "likely to adversely affect" a listed species or their critical habitats.

Page 4-7, line 1-4 - Noxious weeds are not any more of a fire hazard than any other type of vegetation, and we suggest removing that part of the sentence. Perhaps adjust it to say, "Due to the soil disturbance from the proposed construction the possibility of noxious weed infestations sharply increases. The infestations would result in a loss of crop production along the Tongue River corridor and surrounding areas. Spotted knapweed, Houndstongue, Canada Thistle and Burdock are the four known weed species that are present along the Tongue River at this time. Other possible species are primarily Leafy Spurge and Salt Cedar, but any weed seeds could be brought in on equipment used within the construction area."

Page 4-10; Page 4-80, lines 30-45; Page 4-96, lines 19-48; Page 4-97, lines 1-6; Page 5-10, line 41, and Volume II – *Biological Assessment For Endangered or Threatened Species, Tongue River Railroad - September, 2004*, pages 16-48: These pages provide statements on the threatened bald eagle (*Haliaeetus leucocephalus*). Bald eagles use the action area throughout the year for foraging, nesting, and roosting activities. Bald eagles winter throughout the area, and concentrate locally near open water, roost sites, or food sources found away from water such as carcasses. The value of the river above and below the Tongue River Dam to attract migrant and wintering bald eagles has been recognized (e.g., Phillips et. al. 1978). Fluctuating numbers of bald eagles winter along the Yellowstone River and its other major tributaries. It is estimated that an average of 10-15 bald eagles winter along the Tongue River below the Tongue River dam (U.S. Fish and Wildlife Service 1992). Significant numbers of eagles pass through these areas as migrants. During migration as many as 50 bald eagles have been counted along the Tongue River from Miles City to the upper end of the Tongue River Reservoir (Farmer 1992). An aerial

winter survey along the Montana/Wyoming border in January 2003 identified 53 bald eagles hunting and roosting along a 20-mile long Tongue River Corridor (Hayden-Wing, Pers. Comm. 2003). The TRRC needs to update its status information on the bald eagle and include this information in a revised biological assessment. Spring surveys along the Tongue River in Montana in 2004, identified at least 7 active bald eagle territories for a total of 11 documented nests. Aerial surveys by the BLM from January to March 2004 on the upper Tongue River identified five winter roost sites. On March 4, 2004, 50 bald eagles were observed at 22 locations. The final EIS should analyze the impacts of the proposed action on these and other possible winter roost sites and current nesting territories along the Tongue River.

In November of 1995, the USFWS formally consulted with the ICC on the proposed TRRC's additional rail line from Ashland to Decker, Montana, in the Powder River Basin (U.S. Fish and Wildlife Service 1995). The USFWS anticipated one bald eagle could be lethally taken as a consequence of increased disturbance. The incidental take was expected to occur as a result of potential premature fledglings and/or nest abandonment during the construction phase and possible train strikes of adult birds during the operational phase.

Our current understanding is that the proposed alignment is between 0.5 to 1.1 miles from the 11 bald eagle nests along the Tongue River and a yet to be determined distance to current winter roost sites. Even with the proposed mitigation measures, it is not unreasonable to conclude that the total negative impacts to the bald eagle are not insignificant or discountable or that incidental take is not anticipated.

The USFWS recommends additional commitments by SEA to survey for additional winter roosts and analyze impacts to wintering bald eagles. We also recommend as discussed on page 44 on your *Biological Assessment for Endangered or Threatened Species, Tongue River Railroad – September 2004*, that additional mitigation be proposed to identify tracts of land important for winter roost sites and nesting, for purchase/easement and management. The USFWS and the Montana Bald Eagle Working Group would assist TRRC in this effort.

The USFWS looks forward to reviewing your revised biological assessment that includes updated species-specific survey data and additional actions to address the concerns stated in this review. If it is determined that the project "may affect, but is not likely to adversely affect" federally listed species or their critical habitats, the Federal agency should request the USFWS's review of the biological assessment and concurrence with the determination for the project. If it is determined that the project "may affect, likely to adversely affect" any federally listed species or their critical habitats, formal consultation should be initiated with the USFWS. Alternatively, informal consultation can be continued so the USFWS can assist in modifying the project to reduce impacts to federally listed species to the "not likely to adversely affect" threshold. Should new or additional information become available regarding this project, we will be pleased to address specific issues as appropriate. Should you have questions, please contact Lou Hanebury in the USFWS Billings, Montana, Field office at (406) 247-7367.

Page 4-12, line 28-41; and Page 4-81, lines 5-30: Currently the pallid sturgeon (*Scaphirhynchus albus*) does not occupy the upper reach of the Tongue River. It is our hope,

that once passage is attained at Intake Diversion Dam on the Yellowstone River, and at T and Y Diversion Dam on the Tongue River, that the pallid will reoccupy its former spawning habitat. Endangered pallid sturgeon do occur at the Miles City Fish Hatchery and therefore within the proposed action area.

Pages 4-13, line 5 and 4-15, line 23 - According to our information, the Tiger Salamander is not a species of special concern. Paddlefish (*Polyodon spathula*), Sturgeon chub (*Macrhybopsis gelida*), and the Blue sucker (*Cycelptus elongates*) are all on the Montana Species of Concern List, and are located downstream of the proposed Western Alignment within the Tongue and/or Yellowstone River. Baseline habitat and population information was not provided and an effects analysis was not completed for these downstream fish species.

Page 4-21, line 25 - The source of the "over winter" information should be identified. We believe that the rainbow population has very little natural reproduction and could have low over winter survival. However, electroshocking data from Montana Fish, Wildlife and Parks indicated in 2000, 2003, & 2004 that the mean length was 14.6, 13.5, and 9.96 inches, respectively. These relatively high mean lengths may indicate a larger amount of over winter survival. In addition, the Tongue River does not freeze for a considerable distance downstream of the dam, which may also increase survival rates.

Page 4-21, lines 25-28 - Based on conversation with Montana Fish, Wildlife and Parks, brown trout were stocked periodically for many years but have not been stocked recently. The 2000 "Evaluation of Salmonid Populations in Tongue River Reservoir's Tailrace Following Re-construction of Tongue River Dam" report made the following recommendation: "Stock brown trout over a five-year period to reestablish a natural recruiting population, as water temperatures are more conducive to browns than rainbows".

Pages 4-55 & 56, Section 4.2.10 - There is no mention of recreation on BLM or USFS lands. This should be corrected in the final EIS.

Pages 4-56 & 67, Section 4.2.11 - VRM Management Class II – This river corridor is a lovely segment of Eastern Montana landscape which includes good character, diversity, color, line, form, and views.

Page 4-78, line 27. Mitigation Measure 22 (Wetland Permit): The word "reasonable" should be omitted from "reasonable mitigation." Compensatory mitigation is required to offset unavoidable wetland impacts which remain after all appropriate and practicable avoidance and minimization have been applied. The compensatory mitigation required to offset the wetland impacts from your proposed action will be determined by the Corps before issuance of the required Section 404 permit. The USFWS will provide comments to the Corps during the public notice process on any permit.

Page 4-78, lines 39-42 - The statement indicates that mitigation measures should " minimize placement of fill in streams". How is this going to occur with the proposed Western Alignment?

Page 4-79, line 31: Replace "mitigation conditions" to "terms and conditions of incidental take statements" imposed by….

Page 4-81, lines 35-39 - There is no mention of sauger being on the MT NHP Species of Concern list.

Page 4-82, lines 36-41 - The timing of fish surveys should be specified.

Page 4-97, line 23 - Does the number of 20 include the sauger?

Page 4-114, lines 4-7 - With the amount of fill that will be deposited (associated with the proposed Western Alignment), I believe it is essential to have a culvert that will pass a 100 year event without static head and with anticipated beload/debris. These culverts should be able to pass an unrestricted 100 year event. Using the head at entrance and allowing ponding will only increase the potential for failure in these stream crossings. Large releases of sediment can harm and kill aquatic life. In a high flow event, the large amount of fill material (associated with the proposed Western Alignment) could reach levels that could harm and kill aquatic life within the Tongue River.

Page 4-113, line 21, Mitigation Measure 48 (Tongue River Crossing): We support TRRC's commitment to design the bridge crossing the Tongue River so that the bridge does not require a center abutment, and so the side abutments are placed outside of the riparian zone.

Page 4-114, lines 33-38 - We believe that the structures should pass a 100-year event to lessen effects to aquatic fish and other biota.

Pages 4-118-127, Section 4.3.5 - As appropriate within this section, we suggest inclusion of BLM's standard stipulation for paleontological resources. Although the text is variable, it basically says "If significant paleontological resources are discovered during surface disturbing activities, all work that potentially would damage the resource must cease, the area of concern must be protected, and the BLM notified as soon as possible. Appropriate mitigation measures would be developed by the BLM and implemented as soon as possible."

Page 4-118, lines 33-35 - Paleontologic resources are not eligible for listing in the NRHP.

Pages 4-118, lines 40-48 and 4-119, lines 1-7 - The PA (App.G) does not cover paleontological resources, and all references to paleontological throughout this paragraph should be deleted. The document, therefore, contains no mitigation measures discussion for paleontological resources.

Page 4-120, lines 22-26 - These two sentences are incorrect. Paleontological resources are not surveyed during cultural survey efforts, nor is that allowed. Any surveys required for paleontological resources must be done by a qualified and permitted Paleontologist, not an

Archaeologist. In the case of the TRRC, however, the low potential for discovery of significant paleontological resources negates the need for a formal field paleontological survey.

Page 4-125, lines 24-26 - Again, the PA does not address paleontological resources.

Page 4-127, line 15 - Although the title of this section mentions Paleontological Resources, there is no discussion in the text. Basically, however, there would be no impacts on Paleontological Resources from Operation and Maintenance, unless new surface disturbance occurs.

Pages 4-175 & 176, Section 4.3.10.1 - This evaluation should be revised. Block management and dispersed of use BLM and USFS lands would be impacted. You need to rethink the Tongue River Reservoir State Park to analyze the use and pressure impact over time for people and space during the construction phase.

Pages 4-176 & 177, Section 4.3.10.3 - Visual impacts and noise both diminish "quality of experience". Trains may impact hunting on block management areas because of displacement of game.

Page 4-177, Section 4.3.11.1 - VRM contract ratings would breach management class criteria. VRM resource would diminish. Cuts/fills, track lines, and coal trains are all evidence of landscape change. You need to think of the view from the river which is a public route.

Pages 5-6 to 5-9. Miles City Fish Hatchery: The Miles City Fish Hatchery raises endangered pallid sturgeon for the pallid sturgeon recovery effort. It supplies only young pallid sturgeon for augmentation of the pallid sturgeon population in the Missouri River above Fort Peck Reservoir. Any impacts that would result in the failure to produce pallid sturgeon for this effort would adversely affect pallid sturgeon recovery. We concur with the proposed mitigation measures to minimize adverse affects and recommend that TRRC address all additional requests from Montana Fish Wildlife and Parks.

Page 5-26, Section 5.3.10 - Except for the land used for the right-of-way and the dissected land outside of the fenced right-of-way corridor, block management needs lots of gates or other ways to cross the railroad tracks.

Page 5-26, line 20 - "No new significant" is a subjective term. Loss of an opportunity to recreate is very significant to those losing the experience.

Pages 5-26 & 27, Section 5.3.11 - VRM is not just about personal domiciles and the C/F view from their home. It is about the overall landscape character of the Powder River Valley. The before versus the after construction of a rail line.

Page 6-1 ff., Chapter 6 - The cumulative impacts to Miles City from increased rail traffic is not assessed in this document. The increased train traffic from Decker to Miles City is discussed in Chapter 2 which states that there will be 14 trains a day from Decker to Miles City. However, we never add that to the existing traffic passing through Miles City which would not come from the TRRC and discuss these cumulative impacts to the community. There are several freight trains and coal trains (Colstrip and Absaloka Mines) that will not use the TRRC but still pass through Miles City. This needs to be done to fully address cumulative impacts. One long coal train passing through town disrupts much of the vehicular cross town/tracks traffic access several times a day for several minutes each day. This affects emergency services as we have only one underpass. More train traffic means more disruptions to basic emergency services for a town of about 10,000 people.

Pages 6-4, lines 47 & 48 and 6-5, lines 1-5 - The subject Spring Creek federal coal lease was issued in March of 1991 and mining has been underway in the new lease area since the lease issued. The State leases have also issued.

Page 6-16, lines 27-33, Conclusions on the cumulative and indirect effects of Coal Bed Methane and your proposed action: USFWS in the *Final Biological Opinion for Coal Bed Methane (CBM) Production in Blaine, Gallatin, Park, Carter, Powder River, Custer, Rosebud, Treasure, Wheatland, Sweet Grass, Stillwater, Carbon, Golden Valley, Musselshell, Yellowstone, and Big Horn Counties finalized on September 3, 2002,* (USFWS 2002) determined that the proposed CBM production would adversely affect the bald eagle. These adverse affects should be included in your cumulative impacts discussion.

Pages 6-25 & 26, Section 6.6.10 - Loss of space is only part of the recreation equation. Quality of experience in space is equally or more important. The recreation resource would be impacted by this project. This project is not too far from the coalbed methane project. The Tongue River Railroad in conjunction with other projects will fracture land use, bump use pressure, and alter the experience.

Pages 6-26 & 27, Section 6.6.11 - The conclusion about VRM significance is merely an opinion. What is in the minds of locals and frequent visitors to the area? Are they equally as tolerant to landscape disturbance as SEA?

Page 7-27, lines 12-22 - With the amount of fill that will be deposited (associated with the proposed Western Alignment), we believe it is essential to have a culvert that will pass a 100-year event without static head and with anticipated beload/debris. These culverts should be able to pass an unrestricted 100-year event. Using the head at entrance and allowing ponding will only increase the potential for failure in these stream crossings. Large releases of sediment can harm and kill aquatic life. In a high flow event, the large amount of fill material (associated with the proposed Western Alignment) could reach levels that could harm and kill aquatic life within the Tongue River.

Page 8-1, lines 31-36 - This comment is for this section and for the direct, indirect, and cumulative effects analysis throughout the document. The document seems to be trying to support an idea that the proposed Western Alignment is a better alternative for wildlife, aquatic biota and other resources, since it impacts fewer acres, etc. The amount of acres affected does not necessarily result in a determination that can be classified as a lessened effect. In regard to aquatics, the proposed Western Alignment poses a much greater risk of harm to populations of fish (including the sauger), aquatic invertebrates, and amphibians due to the potential of a high flow event washing sediment down the much steeper draws of the proposed Western Alignment. This risk is elevated by not considering the construction of trusses/bridges (instead of fill) and the placement of culverts that can pass unrestricted 100 year event flows. The risk of a high flow event and the effects of sediment (deposited directly into the Tongue River) on aquatic biota is not analyzed in the document. This potential effect should at least be analyzed before selecting an action.

Sincerely,

Robert F. Stewart

Robert F. Stewart
Regional Environmental Officer

Literature Cited

Farmer, P.J. 1992. Western Technology and Engineering, Inc. February 23, 1992. Letter to Alan Newell, Historical Research Associates, Inc.

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