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Final Environmental Impact Statement

Finance Docket No. 30186 (Sub. No. 2)

Tongue River Railroad Company - Construction and Operation - of an Additional Rail Line From Ashland to Decker, Montana

Information Contact:

Elaine K. Kaiser, Chief
Section of Environmental Analysis, or
Dana G. White
Environmental Protection Specialist
(202) 927-6213

Prepared by:

Section of Environmental Analysis
Surface Transportation Board
1201 Constitution Avenue, NW
Washington, DC 20423

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board¹

[Finance Docket No. 30186 (Sub No. 2)]

Tongue River Railroad Company -- Construction and Operation of Additional Rail Line from Ashland to Decker, in Rosebud and Big Horn Counties, Montana

The Tongue River Railroad Company (TRRC) applied to the Interstate Commerce Commission (ICC), now the Surface Transportation Board (Board), for authority to construct and operate a 41-mile rail line from a point south of Ashland, MT to a point near Decker, MT. The ICC's Section of Environmental Analysis (SEA) began the environmental analysis of this proposal, considering the potential environmental impacts associated with TRRC's preferred route, the Four Mile Creek Alternative, and a "no build" alternative. SEA completed a Draft Environmental Impact Statement (served July 17, 1992) and a Supplemental Draft Environmental Impact Statement (served March 17, 1994).

The Board's SEA has now completed the environmental review process, and its conclusions are discussed in a Final Environmental Impact Statement (FEIS). SEA concludes that the Four Mile Creek Alternative would be environmentally

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the Act), enacted December 29, 1995, and effective January 1, 1996, abolished the Interstate Commerce Commission and transferred certain rail proceedings to the Surface Transportation Board (Board) if they involve functions retained by the Act. This proceeding concerns a function, authorization of rail construction under 49 U.S.C. 10901, that has been transferred to the Board.

preferable to the TRRC preferred route if the Board grants TRRC's proposal, because it would avoid the environmentally sensitive Tongue River Canyon. With the recommended mitigation, construction and operation of that route should meet applicant's project goals of providing more efficient service to coal shippers in this area, without having an unduly severe impact on the environment. The "no build" alternative, while environmentally benign, would not meet those objectives.

Copies of the FEIS have been served on representative individuals and agencies. Also, two copies are available for review at the Rosebud County Library in Forsyth, MT. For additional information about the FEIS, please contact: Elaine K. Kaiser, Chief, Section of Environmental Analysis or Dana White at (202) 927-6213.

Copies of the FEIS are available to all persons for a fee through DC News and Data Inc. at (202) 289-4357 (assistance for the hearing impaired is available through TDD services (202) 927-5721) or by pickup from Room 2229, 1201 Constitution Avenue, NW, Washington, DC 20423. Because of limited resources, we are no longer able to make additional copies available at no cost.

By the Surface Transportation Board, Elaine K. Kaiser,
Chief, Section of Environmental Analysis, Office of Economic
and Environmental Analysis.

Vernon A. Williams

Secretary

Executive Summary

The Tongue River Railroad Company (TRRC) applied to the Interstate Commerce Commission (ICC), now the Surface Transportation Board (Board), for authority to construct and operate a 41-mile rail line from a point south of Ashland to a connection with operating coal mines near Decker, MT. The ICC's Section of Environmental Analysis (SEA) conducted the environmental analysis for this proposal, including the potential environmental impacts associated with TRRC's preferred route, the Four Mile Creek Alternative, and the "no build" alternative. SEA previously completed a Draft Environmental Impact Statement (served July 17, 1992) and a Supplemental Draft Environmental Impact Statement (served March 17, 1994). The Board's SEA has now completed the environmental review process, and its conclusions are set forth in this document.

We have concluded that there are potentially significant environmental impacts associated with both construction alternatives. If the Board grants TRRC's proposal, we believe the Four Mile Creek Alternative would be environmentally preferable to the TRRC preferred route, because it would avoid the environmentally sensitive Tongue River Canyon. With the recommended mitigation conditions, construction and operation of the Four Mile Creek Alternative should meet applicant's project goals, but not have an unduly severe impact on the environment. In contrast, the "no build" alternative, although environmentally benign, would not meet the applicant's objectives for supplying a more efficient service for transportation of coal in the region.

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GLOSSARY

BA.....	Biological Assessment
BLM.....	Bureau of Land Management
BN.....	Burlington Northern
CEQ.....	Council on Environmental Quality
Corps.....	U.S. Army Corps of Engineers
DEIS.....	Draft Environmental Impact Statement
EIS.....	Environmental Impact Statement
EPA.....	Environmental Protection Agency
ESA.....	Endangered Species Act
FEIS.....	Final Environmental Impact Statement
FRA.....	Federal Railroad Administration
FWS.....	Fish and Wildlife Service
HEC.....	Hydrologic Engineering Center
HRA.....	Historical Research Associates, Inc.
ICC.....	Interstate Commerce Commission
MBEWG.....	Montana Bald Eagle Work Group
MDH.....	Montana Department of Highways
MT DHES.....	Montana Department of Health and Environmental Sciences
MT DNRC.....	Montana Department of Natural Resources and Conservation
MT DSL.....	Montana Department of State Lands
MT FWP.....	Montana Department of Fish, Wildlife and Parks
NEPA.....	National Environmental Policy Act
NHPA.....	National Historic Preservation Act
NR.....	National Register
PA.....	Programmatic Agreement
ROW.....	Right-Of-Way
SDEIS.....	Supplement to the Draft Environmental Impact Statement
SEA.....	Section of Environmental Analysis
STB.....	Surface Transportation Board
Task Force.....	Multi-agency/Railroad Task Force
TERO.....	Indian Tribal Employment Rights Ordinances
TRRC.....	Tongue River Railroad Company
WWC.....	Western Water Consultants, Inc.

CHAPTER ONE
BACKGROUND, DISCUSSION OF ALTERNATIVES,
AND CONCLUSIONS

BACKGROUND

On July 17, 1992, the Interstate Commerce Commission's² (ICC's) Section of Energy and Environment, now the Section of Environmental Analysis (SEA), issued a Draft Environmental Impact Statement (DEIS) evaluating the potential environmental effects of the Tongue River Railroad Company's (TRRC's) proposed construction and operation of a 41-mile rail line extension from a point just south of Ashland, Montana to existing coal mines in Decker, Montana. Figure 1-1. The proposed line would be an extension of the not yet constructed 89-mile line between Miles City and Ashland, Montana for which TRRC obtained ICC authorization in 1985.

The principal commodity to be moved on the proposed line would be coal from the Decker-area mines. The proposed 41-mile extension, like the already approved 89-mile portion, would be designed to transport low sulfur, sub-bituminous coal. The extension would be used to transport coal from the Decker area mines to electric utilities in the Midwestern states.

In the DEIS, we analyzed the environmental impacts of (1) TRRC's preferred alignment, which generally parallels the Tongue River; (2) the Four Mile Creek Alternative, which would avoid the Tongue River Dam and a 10-mile section of the river just north of the Tongue River Dam; and (3) the "no build" alternative.³ SEA preliminarily concluded in the DEIS that the Four Mile Creek Alternative would be less environmentally harmful than TRRC's preferred alignment. TRRC's preferred routing through the approximately 10-mile canyon just north of the dam would affect the ecology of the river more than any other route because of the narrowness of the canyon and the resulting proximity of the line

² The Interstate Commerce Commission Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the ICC and transferred certain rail functions and proceedings, including authority to consider the application here, to the Surface Transportation Board (STB or Board).

³ We previously determined in the DEIS, after careful analysis and consultation with individuals and knowledgeable agencies, that there would be no feasible construction alternatives other than TRRC's preferred route and the Four Mile Creek Alternative primarily because of the difficult terrain. Nothing that has come to light since then casts doubt on that conclusion.

to the river and its banks. Avoiding these impacts to the canyon was one of our principal reasons in the DEIS for recommending the Four Mile Creek Alternative, rather than TRRC's preferred route.

We received and considered written comments on the DEIS from the parties and interested federal, state, local and private agencies and individuals.⁴ SEA also considered statements presented at the four public hearings the ICC conducted in August 1992 in Lame Deer, Forsyth, and Miles City, Montana and in Sheridan, Wyoming. Many people commented at these hearings about the DEIS and various environmental issues.

Because of concerns raised through the commenting process, SEA issued a Supplement to the Draft Environmental Impact Statement (SDEIS) on March 17, 1994. There, we preliminarily concluded that the Four Mile Creek Alternative would have more adverse environmental consequences than TRRC's preferred route. We noted that this alternative would result in land disturbance from cut and fill procedures during construction, erosion and loss of soil, deforestation, loss of big game habitat, more fuel consumption and increased air pollution. The Four Mile Creek Alternative could also fragment known pronghorn antelope habitat by acting as a barrier to the daily and seasonal movement of antelope herds moving through this area in search of forage and water. With the potential of increased mining, associated development, highway construction, and human activity in the southeastern portion of the state, pronghorn habitat and other wildlife habitat would become further impaired. Because of these impacts, we tentatively concluded that TRRC's preferred route would be preferable.

We then received written comments on the SDEIS from numerous parties.⁵ As we will explain below, we are now persuaded that the Four Mile Creek Alternative would be environmentally preferable if construction is approved.

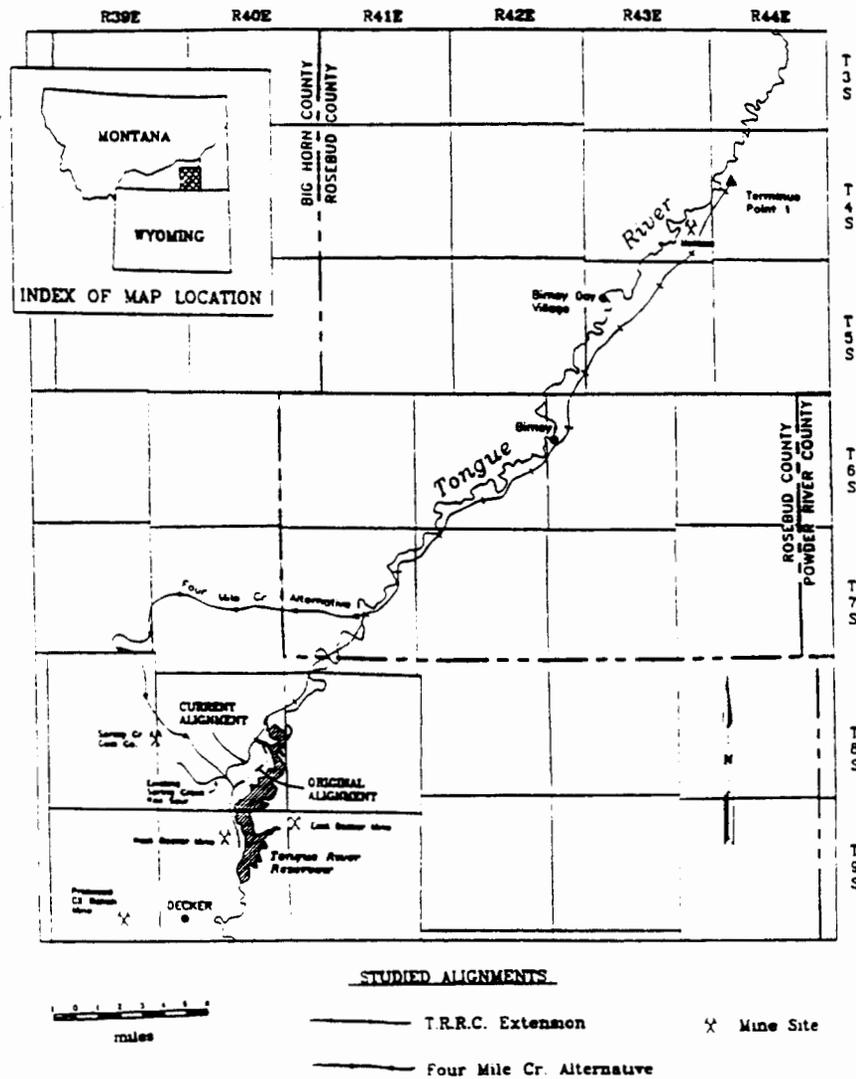
This Final Environmental Impact Statement (FEIS) analyzes the two possible construction alternatives and the "no build" option. In addition to identifying the potential environmental impacts, we have developed appropriate mitigation conditions addressing potential environmental impacts if either construction route is approved. We have also endeavored to determine which

⁴ The parties commenting on the DEIS are listed at the end of this section and copies of the comments are included in Appendix A.

⁵ Those persons are listed at the end of this section, and copies of the comments are included in Appendix B. In light of those comments, we adopt and incorporate by reference the factual data and the identification of potential environmental impacts in both the DEIS and the SDEIS, except as noted in this document.

route would be environmentally preferable if the Board approves the proposal. We have described the three alternatives and the environmental advantages and disadvantages of each below. In comparison with TRRC's preferred route, SEA believes the Four Mile Creek Alternative, with the recommended mitigation, to be environmentally preferable if the Board grants TRRC's proposal. Accordingly, we will begin our discussion with an analysis of that route.

Figure 1-1. Route of the Proposed TRRC Extension.



Prepared by Shuman Engineering, Inc. 1/84

DISCUSSION OF ALTERNATIVES

FOUR MILE CREEK ALTERNATIVE

a. Description of the Route. TRRC proposed the Four Mile Creek Alternative as the only acceptable alternative to its preferred route. That route would duplicate TRRC's preferred route, starting from the terminus on its previously-authorized, but not constructed, 89-mile line in Ashland, paralleling the river until the confluence of the Tongue River and Four Mile Creek. It then would leave TRRC's preferred route and extend southeast along Four Mile Creek, climbing steeply from the Tongue River. It would turn southwestward approximately three miles from the divergence point and continue on that course to its junction with TRRC's preferred route near the Tongue River Reservoir. The Four Mile Creek Alternative would be approximately 10 miles longer than TRRC's preferred route.

Like TRRC's preferred route, the Four Mile Creek Alternative would connect with the private rail line owned by the Spring Creek Coal Company, which provides rail service and connections for Decker-area coal shippers. The Four Mile Creek Alternative would avoid the environmentally sensitive Tongue River Canyon, which is located between the Tongue River Dam and the confluence of the Tongue River and Four Mile Creek.

b. Environmental Advantages. The Four Mile Creek Alternative would avoid a number of potential adverse impacts within the relatively narrow 10-mile Tongue River Canyon. As the river meanders through the canyon, it provides diverse habitat for aquatic and terrestrial wildlife. In particular, the area of the river immediately below the Tongue River Dam has been recognized as important habitat for migrating and wintering bald eagles. Additionally, since the mid-1980's, several bald eagles have nested in the cottonwood trees along this stretch of the river. Because this portion of the river does not freeze, it also provides important year-round habitat for bald eagles and waterfowl. The Four Mile Creek Alternative would avoid adverse impacts to nesting and wintering bald eagles and wintering wildfowl.

Because the canyon is narrow, any ranching and farming operations are close to the river. Some of these operations would be bisected by TRRC's preferred route. The Four Mile Creek Alternative would also avoid these impacts.

The Tongue River Reservoir State Recreation Area and the Tongue River provide popular recreational, fishing, hunting and scenic opportunities year-round. The region from the reservoir northwards along the river to its confluence with the Yellowstone River at Miles City is relatively undeveloped. Because of the canyon's narrow confines, the intrinsic biological, scenic and

aesthetic resources along this approximately 10-mile stretch of the river are particularly noteworthy. They contrast with the surrounding arid and rugged hills and buttes. The Four Mile Creek Alternative would avoid impairing these resources.

Concerns were also raised about the potential impacts to the river from the construction of the five railroad bridges and the tunnel that would be required on TRRC's preferred route within the canyon. These concerns included potential channelization, erosion and silting, flooding, and impacts from potential spills during operations. The Four Mile Creek Alternative would avoid the need to construct the five bridges and the tunnel.

Throughout this environmental review process, two federal agencies have consistently recommended the Four Mile Creek Alternative, or the "no build" alternative, instead of TRRC's preferred route: the U.S. Fish and Wildlife Service (FWS),⁶ the U.S. Environmental Protection Agency (EPA)⁷. SEA has relied on the advice and expertise of these agencies in analyzing potential

⁶ In its May 4, 1994 comments on the SDEIS, FWS reiterates its initial position regarding the Four Mile Creek Alternative:

Impacts to fish and wildlife resources and to Tongue River recreation would be less; adverse impacts to Tongue River Reservoir State Recreation Area would be avoided; adverse impacts to the scenic canyon would be avoided; Tongue River crossings would be reduced to one; less channel disturbance and riparian habitat impacts; reduced pollution threats in terms of sedimentation, toxic spills, and herbicide use; reduced impacts to wintering bald eagles; and fewer adverse impacts on fish and wildlife.

⁷ In its comments on the SDEIS dated May 9, 1994, EPA states:

The EPA has determined that there are potential significant adverse environmental impacts associated with the TRRC's Preferred Alternative that should be avoided in order to adequately protect the environment. We believe the magnitude of these impacts would be less with the selection of the Four Mile Creek Alternative, and could be avoided altogether with the No Action Alternative. We believe that TRRC's proposed alignment would have more adverse consequences on the environment than either the Four Mile Creek Alternative or the No Action Alternative.

environmental impacts and in determining the environmentally preferable route.

c. Environmental Disadvantages. As discussed in the SDEIS, there could be potential safety risks associated with operation of the this route. Moreover, it would entail land disturbance from cut and fill procedures during construction, erosion and loss of soil, deforestation, loss of big game habitat, closer proximity to residences, more fuel consumption and increased air pollution. Because the route would traverse pronghorn habitat, the fenced right-of-way could inhibit pronghorn daily and seasonal migration.

TRRC's principal concern regarding safe operations is the steep descending 2.31 percent grade for loaded unit trains. In the SDEIS, we agreed that this grade could pose an increased risk for derailments compared to TRRC's preferred route. But we continue to believe that there are design and operating options by which TRRC could mitigate potential safety problems and that, despite the difficult grade, loaded train operations could be safely performed. SEA consulted with the Federal Railroad Administration (FRA), and it concurred that the Four Mile Creek Alternative could be operated safely.⁸ TRRC has acknowledged that operations could be conducted, albeit not in line with its preferred design and operating parameters, and with a considerable increase in construction and operating costs.

As previously noted, this route would require cut and fill that could significantly alter and scar the area and change the natural land configuration for the duration of rail use. Thus, there would be a potential for erosion and soil loss within the Four Mile Creek drainage equal to or greater than that for TRRC's preferred route. The necessity of laying the right-of-way on the north-facing slopes of the Four Mile Creek drainage would mean removing ponderosa pine/juniper acreage, habitat for big game and breeding bird populations.

As described in the SDEIS, this route would cross more residential access roads than TRRC's preferred alignment and would be as close as 100 feet to two residences. And as described in the DEIS, the steep grade of this route would require more locomotives during rail operations, resulting in more fuel consumption and potentially more air pollution than operations over TRRC's preferred route.

⁸ Edward R. English, FRA, Director, Office of Safety Assurance and Compliance, letter of March 18, 1996.

TRRC'S PREFERRED ROUTE

a. Description of the Route. From the terminus on its 89-mile line from Ashland to Decker, TRRC's preferred route would follow the Tongue River, generally paralleling the eastern shore until south of the Northern Cheyenne Indian Reservation, crossing the river several times and passing to the west of the Tongue River Reservoir.

b. Environmental Advantages. TRRC points out that its preferred route, despite the need to construct five bridges and a tunnel, would be preferable from an engineering standpoint. As discussed in the DEIS and SDEIS, it would provide a relatively flat grade so that operations would require fewer locomotives and less fuel, thus lowering potential fuel emissions. Further, because TRRC's preferred route would use the flat and even terrain of the Tongue River Canyon, there would be a reduced risk for train derailments. Therefore, TRRC's preferred route would be less costly to build and operate than the Four Mile Creek Alternative.

c. Environmental Disadvantages. As we have explained, the principal environmental disadvantage of TRRC's preferred route is that it would operate through the environmentally sensitive Tongue River Canyon, and also would require the construction of five bridges and a tunnel in the canyon.

FWS, and EPA, the primary federal agencies we rely on to assist us in identifying and evaluating the environmental impacts associated with proposed construction projects, have consistently advised against permitting construction of TRRC's preferred route to avoid damaging this environmentally sensitive canyon.⁹

⁹ As EPA reiterated in a letter to us dated September 6, 1995,:

[We continue] to believe that Four Mile Creek Alternative is the environmentally preferred alternative for the Tongue River Railroad, since it avoids disturbing the environmentally sensitive section of the Tongue River below the Tongue River Dam, and eliminates the need to construct five bridges across the Tongue River and a tunnel. We believe that the construction and operation of a railroad along the proposed Tongue River Canyon alignment in the relatively undisturbed Tongue River Canyon would result in significant adverse impacts to recreational, aesthetic, and wildlife values, including habitat of the threatened bald eagle. We believe the magnitude of these impacts would be less with the selection of the Four Mile Creek Alternative, and could be avoided

In its comments on the SDEIS, EPA disagreed with our change of position and preliminary identification of the TRRC preferred route as the environmentally preferable alternative.¹⁰

FWS notified us that four endangered species could be affected by TRRC's proposed extension (i.e., either TRRC's preferred route or the Four Mile Creek Alternative): peregrine falcon, black-footed ferret, pallid sturgeon, and bald eagle. Our detailed analysis under the Endangered Species Act (*see* Chapter Two) has revealed that the bald eagle could be adversely affected if TRRC's preferred route is approved and constructed; the Tongue River Canyon provides documented habitat for that species.

Because of this potential impact, we prepared a Biological Assessment (BA) analyzing the impacts to this species, and sought FWS's concurrence with the BA's conclusion that there would be no undue adverse impact to the bald eagle. FWS responded in its Biological Opinion (*see* Appendix C) that TRRC's preferred route

altogether with the No Action Alternative. We believe that the TRRC's proposed alignment would have more adverse consequences on the environment than either the Four Mile Creek Alternative or the No Action Alternative.

¹⁰ EPA stated:

[T]he TRRC's preferred alternative, which would require construction of five bridges over the Tongue River, each of which would require excavation and/or fill within the stream's high water line, would result in significant adverse impacts to the chemical, physical, and biological integrity of the Tongue River. We also believe that the construction and operation of a railroad along the TRRC's proposed alignment in the relatively undisturbed Tongue River Canyon would result in significant adverse impacts to recreational, aesthetic, and wildlife values, including habitat for the bald eagle.

The EPA has determined that there are potential significant adverse environmental impacts associated with the TRRC's Preferred Alternative that should be avoided in order to adequately protect the environment. We believe the magnitude of these impacts would be less with the selection of the Four Mile Creek Alternative, and could be avoided altogether with the No Action Alternative.

would not unduly interfere with the bald eagle recovery program in Montana. FWS also stated, however, that potential environmental impacts associated with constructing and operating the railroad through the Tongue River Canyon would be far more difficult to mitigate than the overall adverse impacts of the Four Mile Creek Alternative. FWS stated that none of the adverse environmental impacts would occur if the "no build" alternative were selected.

As previously noted, TRRC's preferred route would require construction of five bridges and a tunnel. When, as here, construction involves wetlands and/or waters of the United States, the railroad must obtain a permit under Section 404 of the Clean Water Act. The U.S. Army Corps of Engineers (the Corps) issues such permits only for the least environmentally damaging practicable alternative.

Although the Corps will not formally identify a preferred alternative during another agency's EIS process, it does review such documents to ensure that the EIS makes full disclosure and that it contains sufficient information for the Corps to make its permitting decision. In a letter dated July 29, 1994, the Corps stated that TRRC's preferred route would have greater impact to the aquatic ecosystem than the Four Mile Creek Alternative.¹¹

The Corps requested further information about wetlands identification and delineation for TRRC's preferred route,¹² and on review of a further study submitted by TRRC, the Corps determined that TRRC's preferred route is reasonable, given safety factors, and that wetlands would not be a significant

¹¹ The Corps stated:

From our review of the Supplement to the DEIS, it appears that the Four Mile Alternative would have less adverse impact to the aquatic ecosystem. The Four Mile Alternative does appear to have other adverse environmental consequences; however, the significance of these other consequences is not clear. The significance of the impacts of the applicant's preferred alternative on the aquatic ecosystem is also not clear. It could turn out that we may only be able to permit the Four Mile Alternative.

¹² TRRC subsequently prepared for the Corps, through its contractor Western Water Consultants, Inc., a study entitled "Jurisdictional Wetlands Delineation for the Proposed Tongue River Railroad Extension Decker to Ashland, Montana." A copy of the study and accompanying correspondence, is attached in Appendix D.

issue here. The Corps further stated, however, that a Section 404 permit application would be needed for both the proposed extension and the original 89-mile line, for which the Corp permit has now expired.

Throughout this environmental review process, we have received comments regarding the natural beauty and intrinsic value of the Tongue River Canyon and the need to protect these resources. As the comments show, many believe that the construction and operation of a rail line through this area, particularly through the canyon, would diminish and possibly destroy its aesthetic and natural appeal. Commentors have argued that noise and air pollution would be unwelcome, right-of-way fencing would inhibit wildlife movement, wildlife would be stressed and killed by trains, and that overall day-to-day train operations would disturb the tranquility of the area.

The canyon is also popular for fishing and boating, and other recreation activities. The recreation area is adjacent to the reservoir and provides camping and picnic facilities. The reservoir is a popular recreation location, and the shores and nearby hills provide sites for vacation homes.

The canyon also supports ranching and farming activities that to some extent encroach on the pristine character of the canyon and the Tongue River. For some commentors, this encroachment provides more reason to protect the river and surrounding area from further development.

THE "NO BUILD" ALTERNATIVE

The "no build" alternative would be environmentally neutral because none of the environmental impacts associated with the proposed extension from Ashland to Decker, employing either TRRC's preferred route or the Four Mile Creek Alternative, would occur. The "no build" alternative would preserve the status quo. The present movement of coal from the Decker mines would be unaffected because the Burlington Northern Railroad (BN) is already providing service to these mines via an alternate route. This alternative would not permit TRRC to participate in what it describes as a more efficient and shorter new movement serving area mines in conjunction with BN. Nevertheless, the present BN movement of coal from Decker would continue over the existing BN line now serving the Powder River Basin.

Although the extension would not be built under this alternative, the previously authorized 89-mile line from Miles City to Ashland, designed to serve new mines in Montana, could still be constructed and operated. TRRC would still be able to serve the Montco mine, a permitted mine site with an estimated annual coal production capacity of 38 million tons, and four potential mine sites in the Ashland/Birney/Otter Creek area.

A portion of the existing BN line extends through the Crow Indian Reservation in Montana. It is SEA's understanding that this line is currently subject to a long term lease involving the Crow Indian Tribe. BN may need to renegotiate this lease to continue its use of the current rail line through the Crow Indian Reservation. If the lease is not renewed, the railroad may consider alternatives such as transporting coal over its southern line through Wyoming. This would add considerable mileage to Upper Midwest destinations (and greater fuel use with associated pollutant emissions) that could be avoided by routing traffic over the proposed TRRC extension.

CONCLUSION

We have reviewed the comments carefully, and conclude that the Four Mile Creek Alternative would be the environmentally preferable construction option. Although TRRC's preferred route would be better from an engineering viewpoint because of the flatter grade, its advantages would be outweighed by the fact that TRRC's preferred route traverses the environmentally sensitive Tongue River Canyon and would require the construction of five bridges and a tunnel through the canyon.

The Four Mile Creek Alternative is the only viable construction alternative to TRRC's preferred route. It would avoid the environmentally sensitive Tongue River Canyon. It would also avoid the area's recreation resources and the need for blasting near the Tongue River Dam. Because it would avoid the need to construct five bridges through the Tongue River Canyon, it would reduce the potential for increased bank erosion, river channelization, and flooding. EPA, FWS, and the Corps have consistently recommended this alternative, or the "no build" alternative, rather than TRRC's preferred route.

There would be some environmental impacts associated with the Four Mile Creek Alternative. These include a difficult grade that, though safe to operate, would require strict adherence to rigorous operating practices, increased fuel consumption and air pollution, land disturbance, habitat and wildlife loss, and proximity to residences. Because of the steep grade and the need for more engines, the Four Mile Creek Alternative would be more costly to construct and operate than TRRC's preferred route.

The Council on Environmental Quality's (CEQ) regulations require agencies to identify a preferable alternative or alternatives, if one or more exists. See 40 CFR 1502.14(e). The environmentally preferable alternative is defined by CEQ as that causing the least impact to the biological and physical environment. It would have the lowest level of ground and vegetation disturbing activities and would best protect, preserve, and enhance historic, cultural, and natural resources.

Based on this definition, the environmentally preferable alternative here would be "no build," because it would require no new construction and would not increase environmental impacts. The "no build" alternative, however, would fail to provide the transportation benefits for which this project has been designed.

SEA believes that the Four Mile Creek Alternative, conditioned upon compliance with the mitigation conditions specified in Chapter Three, would be the least environmentally damaging construction option. That alternative would avoid the environmentally sensitive Tongue River Canyon. Although the mitigation measures set out below would not eliminate all the environmental impacts identified with the Four Mile Creek Alternative during the environmental review process, they would reduce their significance. Because of the environmental impacts that would be associated with constructing and operating a railroad line through the canyon, mitigation would be less effective if the Board were to approve TRRC's preferred route. Accordingly, we believe that the environmental impacts associated with the Four Mile Creek Alternative would be less severe than those associated with TRRC's preferred route.

LIST OF PARTIES COMMENTING

DEIS¹³

Maurice and Lillian Bousquet
William P. Carrel
Duane Claypool
Ellen Cotton
Mary B. Daniels
John A. Day & Associates
Bruce Delaney
Lauran E. Dundee
Forest B. Dunning
Mark Fix
Greg Gordon
Art Hayes, Jr.
Marilynn S. Hayes
Dick Hosford, Jr. and Misty R. Carlson
Robert Kalt
Andrew N. Lemann on behalf of Bones Brothers Ranch, Inc.
Clifford L. Locke
Kay Brewster Lohof and Timothy G. Lohof
Robert R. Martinek
Dick Martinson
Wallace D. McRae
Pat A. Mischel
William R. Musgrave, Judith Ann Musgrave, Kyle Ann Compton
Berniece Musgrave
John P. Reynolds
Heidi Wehmeyer and Kent Reeves
Paul M. Schmeling
Dorothea J. Schultz
Rosebud County Weed Board

Montana Department of Fish, Wildlife and Parks
Montana Department of Natural Resources and Conservation
Montana Department of Transportation
Montana State Historic Preservation Office
Montana Office of Public Instruction

University of Wyoming, College of Agriculture
Medicine Wheel Coalition for Sacred Sites of North America
Medicine Wheel Alliance/Associated with Northern Cheyenne
Cultural Commission
Northern Plains Resource Council
Tawney and Dayton
Sant'Angelo & Trope

¹³ See Appendix A for text of comments.

Task Force of Chiefs & Military Societies of the Northern
Cheyenne
Tongue River Railroad Company
The Wilderness Society

United States Department of the Army, Corps of Engineers, Omaha
District
United States Environmental Protection Agency, Region VIII

Brotherhood of Locomotive Engineers, Montana Legislative Board
United Transportation Union, Local #951

SDEIS¹⁴

Jean Alderson
Mary Alderson
David Bliss
Maurice and Lillian Bousquet
William Carrel
John Day et al
Lauran Dundee
Mark Fix
Steve Gilbert
Art Hayes
Penny and Jerry Iekel
Jack Knobloch
Gene Kurtz
David LaGree
Andrew Leman
Clifford Lock
Betty Martinson
Dick Martinson
Mary McWilliams
Linda Moane
Berniece Musgrave
Joseph Oberth
Nathalie Penson
Terrance Poland
Judith Presler
Nicholas Rou
John Sanders

Nance Cattle Company
Bones Brothers Ranch
Musgrave Ranch

American Rivers
Native Action
Natural Resources Defense Council
Northern Plains Resource Council

¹⁴ See Appendix B for text of comments.

Tongue River Railroad Company
Trading Post
Trout Unlimited
University of Wyoming
Wilderness Society

City of Sheridan, WY
Powder River County (MT) Commissioners
Rosebud County, MT

Montana State Historic Preservation Office
Montana Department of Fish, Wildlife and Parks
Montana Department of Natural Resources
Montana Department of Transportation

United Transportation Union, MT State Legislative Board
United Transportation Union, Assistant General Council
United Transportation Union, General Committee of Adjustment
United Transportation Union, Local #951
Brotherhood of Locomotive Engineers, MT State Legislative Board
U.S. Department of the Army, Corps of Engineers, Omaha
District
U.S. Department of the Interior, Fish and Wildlife Service,
Montana Field Office
U.S. Department of the Interior, Bureau of Land Management,
Montana State Office
U.S. Environmental Protection Agency, Region VIII
U.S. Department of Transportation, Federal Railroad
Administration

CHAPTER TWO
ISSUES

This chapter addresses the most frequently cited concerns and issues raised in comments to the DEIS, the SDEIS, and at the ICC hearings of August 1992, and provides a brief discussion of each issue. In accordance with CEQ guidelines,¹⁵ we have grouped similar comments and prepared a single answer for each group, and have summarized especially voluminous comments. Other comments were raised, but after careful review, we believe that these concerns have been adequately addressed already, either in the DEIS or the SDEIS.¹⁶

Endangered Species Act issues. When we issued the SDEIS, the process under Section 7 of the Endangered Species Act (ESA), 16 U.S.C. 1536, had not yet been completed. The regulations implementing ESA do not specifically require the completion of the process prior to completion of the FEIS. FWS, the agency responsible for assuring compliance with ESA, recognizes various acceptable approaches, one of which has been adopted here. Pursuant to FWS' request, the DEIS summarized what was known about all the identified endangered and threatened species in the project area, discussed recognized concerns and data needs for these species, indicated how these concerns/data needs would be addressed, and summarized how the Section 7 compliance process would be completed if the agency approved the proposed construction project. Four endangered species were identified in the DEIS as possibly occurring in the project area: bald eagle, peregrine falcon, black-footed ferret, and pallid sturgeon.

During the comment period to the DEIS and to the SDEIS, SEA obtained more information about the endangered species in the project area, especially the bald eagle. Specifically, active bald eagle nests were identified in close proximity to TRRC's

¹⁵ See 40 CFR 1503.4 and "NEPA's Forty Most Asked Questions," 46 Fed. Reg. 18026 (Mar. 23, 1981) at 18034-35.

¹⁶ Some parties have requested further studies addressing various issues. For areas that we believe needed more discussion, we have included additional material in this FEIS. In all other regards, we believe there is sufficient discussion in the DEIS and the SDEIS to satisfy our obligations under NEPA and other environmental statutes. Any additional studies that might be necessary would be conducted at the appropriate time as required either by federal, state or local permitting or the mitigation conditions.

preferred route along the Tongue River just north of the Tongue River Dam.

SEA requested Historical Research Associates, Inc. (HRA) to act as the agency's non-federal representative to prepare a Biological Assessment (BA), pursuant to 50 CFR 402.08 of ESA, to determine the effects of the proposed action on endangered species and to work with FWS in preparing the BA.

HRA prepared the draft BA in June 1995 for TRRC's preferred route, but did not include a discussion of any alternative routes. HRA concluded that none of the four endangered species that could occur in the project area would be adversely affected. FWS agreed that the proposed action would not likely adversely affect the peregrine falcon, black-footed ferret, and pallid sturgeon. FWS could not concur, however, with HRA's determination that the proposed action would not adversely affect the bald eagle.

FWS, supported by EPA, strongly urged the ICC to enter into formal consultation under Section 7 before completing the FEIS. According to FWS, this would allow evaluation of impacts to endangered species, especially to the bald eagle, and permit development of any necessary mitigation. The information would then be available to the agency in making any final decision regarding TRRC's proposed extension. In August 1995, SEA, on behalf of the ICC, entered into formal consultation with FWS. In November 1995, FWS transmitted its Biological Opinion, thus completing formal consultation.¹⁷

The Biological Opinion concluded that TRRC's preferred route "is not likely to jeopardize the continued existence of the Pacific states bald eagle population" and that no critical habitat would be destroyed or harmed. The Biological Opinion states that FWS anticipates that the proposed project would likely result in the death, referred to as "incidental take," of bald eagles during construction and operation. The Biological Opinion would formally permit the incidental take of two eagles during construction and one eagle every two years during operation of the TRRC extension. The Biological Opinion sets five non-discretionary "reasonable and prudent measures" that FWS

¹⁷ All correspondence regarding the formal consultation process and a copy of the BA and Biological Opinion are included in Appendix C.

The Mitigation Plan proposed in the DEIS would have required TRRC to complete the Section 7 process in coordination with FWS during final engineering. Because the Section 7 process has now been completed, we have removed that requirement.

believes necessary and appropriate to minimize eagle loss, and three terms and conditions implementing these measures. We adopt the Biological Opinion in its entirety. See Appendix C. We will also recommend the following condition if the TRRC preferred route is authorized:

TRRC shall adhere to FWS's measures, terms, and conditions set forth in the Biological Opinion dated November 22, 1995.

We note that FWS' Biological Opinion is expressly limited to the potential effects of TRCC's preferred route on the bald eagle. No specific mitigation measures were outlined by FWS for possible endangered species that might occur along the Four Mile Creek Alternative because that route was not specifically screened by it for endangered species. But the very use of this alternative route was intended to avoid traversing the environmentally sensitive 10-mile Tongue River Canyon where bald eagles nest and winter. Moreover, FWS references two letters it addressed earlier to us indicating that no adverse effects would occur if the "no build" option were selected, and that the Four Mile Creek Alternative would cause fewer impacts to wintering and nesting bald eagles than TRRC's preferred route. See Appendix C. Because no evidence has been submitted indicating that bald eagles nest on the portion of the Four Mile Creek Alternative that deviates from the TRRC preferred route, no additional mitigation for endangered species is required.

Additional wildlife concerns. MT FWP indicates that pronghorn antelope would be the single most adversely affected species if the Four Mile Creek Alternative were constructed. That area, unlike the area closer to the river, is pronghorn habitat, and pronghorn currently cross throughout this area searching for available forage and water. The fenced railroad right-of-way would act as a barrier to their movement. The Mitigation Plan suggested in the DEIS would have required TRRC to perform appropriate ground and aerial surveys to identify all affected wildlife species and associated habitats and to time construction activities to reduce damaging impacts. If the Four Mile Creek Alternative is approved and constructed, we recommend that the following conditions be imposed:

(a) TRRC (in cooperation with MT FWP) will expand its ground and air survey program to include seasonal surveys showing where pronghorn are concentrated and their distribution and movement. From this information, TRRC shall assess and minimize impacts from the proposed right-of-way.

(b) TRRC will place fencing to accommodate seasonal migration, in compliance with BLM Fencing Handbook, to

protect ranching operations, while allowing for pronghorn movement.

Some landowners have requested that they be included on the Multi-agency/Railroad Task Force (Task Force) formed to foster effective implementation of the mitigation measures we are recommending concerning aquatic and terrestrial ecology. The Board, TRRC, FWS, BLM, MT FWP, and MT DSL are members of the Task Force. Although we will not specifically require that the Task Force include landowners, consultation with them on various issues will be necessary to accomplish many of the required mitigation measures.

Some concerns were raised that the data in the DEIS regarding wildlife studies were outdated, but SEA believes that information presented there remains essentially correct. There has been a thorough study of wildlife here. During the 1970's and early 1980's, wildlife biologists conducted detailed wildlife baseline and monitoring studies for existing and proposed coal mines north and south of the project area.¹⁸ Wildlife inventories were undertaken to obtain baseline data about the current status of wildlife species in the study area.¹⁹ Following completion of the baseline studies, wildlife biologists reviewed the studies to identify the effects of human activity and environmental changes on wildlife species.

The wildlife assessment in the 1992 DEIS was based in part upon the baseline and monitoring studies for the above-listed mine sites.²⁰ The 28 mile long project area from Birney to the Spring Creek and Decker Mines sites, however, was not included in the previous formal wildlife inventories. To supplement the general wildlife information available for that 28-mile section, wildlife biologists conducted three trips to the project area: one field reconnaissance in 1990, and two by air in 1992.

¹⁸ Montco Mine; East and West Decker Mines; Spring Creek Coal Mine (NERCO); CX Ranch Mine (Consolidated Coal Mine).

¹⁹ The baseline studies were based on field surveys to identify the wildlife species in the study area and to locate crucial wildlife habitat and winter range. If threatened or endangered species were present, the studies identified critical wildlife habitat.

²⁰ In general, the reliance of current EISs on extensive wildlife surveys performed in the past has long been found to be appropriate. BLM, for example, in its 1989 DEIS and 1990 FEIS on the Bull Mountains Exchange, another nearby coal mine, cited studies done in 1978 and in 1976.

During the 1990 field reconnaissance, the wildlife consultants interviewed landowners in the project area to obtain their characterization of local wildlife. When landowners indicated that bald eagles were present (information corroborated by state and federal wildlife biologists), the biologists conducted an aerial survey of the project area to verify the presence or absence of nesting bald eagles. In 1992 a wildlife biologist conducted two aerial surveys: 1) in February to determine if bald eagles were using the project area as winter habitat, and 2) in mid-April to determine if bald eagles were nesting in the project area. Since 1992, SEA staff has consulted with FWS and MT FWP personnel regarding wildlife, and that consultation confirms that the information in the DEIS and the SDEIS with regard to potential impacts to wildlife is adequate and correct.

The ecological importance of the Tongue River Valley. The DEIS recommended the Four Mile Creek Alternative as the environmentally preferable route, because it would avoid the environmentally sensitive Tongue River Canyon just north of the Tongue River Dam. Although the DEIS discussed impacts of the TRCC preferred route on the canyon, some commentors correctly pointed out that it did not fully discuss the unique ecological value or address the overall value of the Tongue River and the Tongue River Valley and their environmental significance to the region.

Recently, CEQ published a guide for federal agencies describing the importance of preserving biological diversity and outlining the ways federal agencies can apply preservation principles within the environmental analysis required by NEPA.²¹ The guide recognizes that, of the major factors contributing to the decline of biodiversity (pollution, overharvesting, introduction of exotic species, disruption of natural processes, and global warming) the most pervasive cause is alteration of the physical landscape. The CEQ guide advises agencies to view a proposed project within a larger biological framework rather than as an isolated activity, and we have done so here.

A report prepared by FWS on the Tongue River Reservoir renovation project²² recognizes that, in addition to the habitat of the Tongue River Reservoir, the "approximately 193 miles of Tongue River in Montana not inundated by the impoundment is more important ecologically [than the Reservoir], and is essential to

²¹ Incorporating Biodiversity Considerations Into Environmental Impact Analysis Under the National Environmental Policy Act, CEQ (Washington, 1993).

²² Fish and Wildlife Coordination Act Report for the Tongue River Dam Project, Montana, FWS (Helena State Office, 1992).

much of the remaining natural flora and fauna."²³ The importance of this aquatic ecosystem for agriculture, ranching, and recreation is generally well recognized. What is less well recognized is the intrinsic value of the river and its associated shores and wetlands, located as it is in a surrounding arid setting, and the contribution the river makes to ecological diversity. It is an oasis in southeastern Montana. And of the various habitats of this region, "the riparian habitat is considered to be far more valuable due to its rarity and importance to a very wide variety of wildlife species."²⁴

The Montana Riparian Association emphasizes the unique position rivers occupy in the landscape and wildlife of the Western states, with their importance far exceeding their total area.²⁵ In addition to the diversity of wildlife they support, riparian zones are of prime importance to water quality, water quantity, stream stability and fisheries habitat. Rivers provide critical habitat needs for many species and support a greater concentration of wildlife species and activities than any other feature of the landscape.²⁶ Conservationists recognize that one of the greatest causes of species loss is the loss of habitat.²⁷ It is important to conserve areas such as this that support plant and wildlife diversity.

The FWS report on the Tongue River Reservoir recognized that the river is already under stress, and that the stream course has been extensively altered by the reservoir and agriculture. The result is that the stream is becoming more confined and incised, meanders and oxbows are becoming isolated, and the riparian habitat along the river is dwindling.

Recognizing the importance of preserving biodiversity, we have made the avoidance of further disturbance to this river wherever possible one of our key objectives in the environmental review process here. TRRC's preferred routing through the approximately 10-mile canyon just north of the dam would affect

²³ *Ibid.*, p. 14

²⁴ *Ibid.*, p. 52

²⁵ "Developing a Riparian-Wetland Management Cooperative for Montana," The Montana Riparian Association (undated).

²⁶ *Ibid.*, p.1.

²⁷ According to the National Wildlife Federation, wildlife habitat is being destroyed at a rate of 3,500 acres per day to provide more room for our expanding population and that by the year 2000 approximately 34 million acres of rural land will disappear.

the ecology of the river more than any other route because of the narrowness of the canyon and the resulting proximity of the line to the river and its banks. Avoiding these inevitable impacts to the canyon was one of our principal reasons in the DEIS for preliminarily recommending the Four Mile Creek Alternative, rather than TRRC's preferred route.

The construction of the Four Mile Creek Alternative could also bring some negative environmental consequences, as we described in detail in the SDEIS. Additionally, the Four Mile Creek Alternative could fragment known pronghorn antelope habitat and could act as a barrier to the daily and seasonal movement of antelope herds that move throughout this area searching for available forage and water. Regardless of which route would be constructed, this project would create the potential for increased mining, associated development, highway construction, and human activity in the southeastern portion of the state. Thus, pronghorn habitat, and other wildlife habitat, would become further impaired. In the SDEIS, we tentatively concluded that because of these impacts, TRRC's preferred route appeared to be environmentally preferable.

As a result of comments to the SDEIS and our further research and analysis, however, we now conclude that the Four Mile Creek Alternative would be more environmentally advantageous than TRRC's preferred route. Construction and operation of the TRRC preferred route in the Tongue River Valley would diminish the health and viability of this important ecosystem.

Though we may not be able to measure precisely the extent of the impacts if TRRC's preferred alignment were approved, it appears that this area could be substantially altered by human development, and thus would lose some of its ecological importance. There does not appear to be any effective way to mitigate these impacts. On the other hand, the Four Mile Creek Alternative would avoid the environmentally sensitive Tongue River Canyon, and mitigation measures for its impact on pronghorn habitat are available. Therefore, SEA believes that it would be the least environmentally damaging construction option.

Additional cumulative impacts. (a) Tongue River Dam Reconstruction. On September 30, 1992, President Bush signed the "Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992" (Settlement Act), which guarantees increased water rights to the tribe and allocates funds for the repair and expansion of the Tongue River Dam and Reservoir. Reconstruction of the dam

will be directed jointly by MT DNRC, the U.S. Bureau of Reclamation, the U.S. Bureau of Indian Affairs, and the tribe.²⁸

The Tongue River Dam has been of concern for a number of years. Completed in 1939 to assist agricultural and ranching operations in the area, the spillway is inadequate to accommodate floods. During the flood of 1978, the spillway was heavily damaged and subsequently classified as an unsafe structure by the Corps.

The spillway will be rebuilt and the reservoir impoundment will be raised four feet, inundating an additional 414 acres. Construction is scheduled to begin in 1996 and continue for approximately two years. Thus, it is possible that dam reconstruction and rail construction could occur simultaneously. We have evaluated the possible cumulative environmental consequences of the two projects based upon the information provided to us.

Generally, environmental impacts from the dam reconstruction include impacts during construction and impacts from increasing the permanent size of the reservoir. Dam reconstruction would result in land disturbance and in adverse impacts to terrestrial and aquatic resources, air quality, water quality, wetlands, cultural resources, recreational facilities, and the local economy.

FWS prepared a report in March 1992²⁹ discussing the project area, the project plan, potential impacts to aquatic and terrestrial resources. FWS concluded that, in the short term, environmental impacts to aquatic and terrestrial wildlife from increased inundation would be severe. The report also concluded that, with mitigation and on-going monitoring, long-term impacts would be substantially reduced. In addition, the Settlement Act authorized \$4 million for compensatory fish and wildlife enhancement. Although the report stated that neither the proposed rail extension construction nor potential coal development in the area would significantly degrade fish and wildlife habitats, it conceded that lack of information about both these activities precludes a meaningful impact assessment.

²⁸ Because the proposed dam reconstruction will significantly affect the quality of the human environment, environmental review under NEPA and the Montana Environmental Policy Act is being conducted, including the preparation of an EIS. MT DNRC is responsible for preparing the environmental review documents.

²⁹ Fish and Wildlife Coordination Act Report for the Tongue River Dam Project, Montana.

The most potentially severe environmental impacts would occur during the construction phase of both projects. These impacts would be compounded if construction is simultaneous. The likely impacts of simultaneous construction would be different depending on which of the two rail routes were authorized and constructed. In meetings with MT DNRC and MT FWP,³⁰ both agencies endorsed the Four Mile Creek Alternative as environmentally preferable, in part because it would avoid many of the potential impacts of simultaneous construction by being further from the river.

Although it does not distinguish between TRRC's preferred route and the Four Mile Creek Alternative, the DEIS prepared by MT DNRC for the proposed reconstruction of the Tongue River Dam, issued in June 1995, concludes that the cumulative effect of the dam project and the simultaneous construction and operation of TRRC's proposed extension could have substantial negative effects (both short and long term) on the Tongue River's water quality and aquatic resources, area wildlife, area vegetation, and the region's social and economic base.

Based on the above information, it appears that the simultaneous construction of the dam renovation and the rail line extension would generate severe environmental impacts in the short-term, though these impacts would be diminished if the Four Mile Creek Alternative were constructed. We should also note, however, that requiring separate construction schedules for the railroad and dam reconstruction would lengthen the total time of environmental impact, and inhibit recovery of the area from these short-term impacts.

Long-term impacts from the dam reconstruction would probably not be significant. Inundation following construction could result in impacts to the reservoir's riparian zone, recreation facilities, cultural resources, wetlands, and to area coal mines. At this point in the planning process, however, MT DNRC projects that these impacts could be mitigated below the level of significance.

Long-term consequences of rail construction and operation could be significant. The degree of impact would depend both on which route were approved and built, and the effectiveness of the mitigation measures.

³⁰ Both MT DNRC and MT FWP have specific concerns regarding the potential for simultaneous dam renovation and railroad construction activities. These specific concerns are addressed below.

(b) Coal mine development. The cumulative impacts of area coal mine development have been addressed in the DEIS, under "related actions."³¹ Although environmental impacts of coal mine development related to the 89-mile line were analyzed in an FEIS prepared in 1985, we reexamined that analysis in the DEIS here in light of TRRC's proposal to extend its previously approved line to the mines at Decker and Spring Creek.

TRRC's current proposal involves transporting coal tonnages within the levels projected in the 1985 FEIS. Thus, there was no need for us to change the projected coal tonnage figures, only their distribution (see DEIS, pp. 1-7 through 1-9).³² The coal projections of the earlier 1985 FEIS continue to be valid (see 1992 DEIS, Table 1-1, p. 1-7; Table 1-2, p. 1-8).

(c) Construction of both this line and the previously permitted line. We believe our 1992 DEIS adequately addressed the cumulative effects of the proposed extension and the previously certificated 89-mile rail line between Miles City and Ashland. In that document we adequately updated and corroborated our 1985 analysis, and no further analysis is necessary.

(d) Use of area recreational facilities. The former Tongue River Reservoir State Recreation Area, now the Tongue River Reservoir State Park, is a 640-acre facility on the western shore of the reservoir. MT FWP considers the park, which was created in 1983 under a 25 year lease to MT FWP, to be an important component of the state park system.³³

The present facility is a noted outdoor recreation attraction offering prime fishing, boating, picnicking, sightseeing, bird-watching and hiking. The surrounding area is used extensively for hunting. The park attracts not only Montana residents, but visitors from Wyoming and across the country. According to MT FWP estimates, use of the park will continue to increase.

³¹ That section of the DEIS also analyzed cumulative impacts of construction of the 89-mile line between Miles City and Ashland.

³² SEA described its approach to the analysis of related actions on p. 1-9 of the 1992 DEIS.

³³ Recently, the state legislature considered a proposal of \$1.6 million for capital construction and improvements. Additionally, the public concession currently operating in the park is planning extensive improvements.

A number of short-term cumulative impacts could affect use of the recreational facilities. If the railroad were to be constructed before dam renovation occurs, workers and their families might place heavy demands on the recreational facilities. If dam renovation and railroad construction were simultaneous, however, recreational use of the entire area could be severely restricted. Dam reconstruction will probably necessitate the closing of the recreation area for safety purposes. Moreover, removal of water from the reservoir and river would reduce or eliminate sport fishing and water-based recreation activities.

Long-term impacts of dam reconstruction and reservoir enlargement include relocation of camping and picnic areas, and boat launch sites and other outdoor recreational activities. Conflicts over relocation might arise if the railroad's preferred route were approved and constructed, because that right-of-way would limit the sites available for relocation. Relocating the recreational facilities further to the west, MT FWP's preferred option, would bring the relocated recreational facilities into close proximity with rail operations. Even if the facilities were relocated east of the reservoir, coal train operations could undermine the recreational opportunities the park now offers. Because of the potential impact of TRRC's preferred route on these facilities, MT FWP supports the Four Mile Creek Alternative, which would eliminate these problems.

Indian Tribal Rights Employment Rights Ordinances. EPA (Region 8) commented that the DEIS did not discuss the Indian Tribal Employment Rights Ordinances (TERO). Over the past several decades there have been a number of court decisions concerning preferred employment for American Indian tribes under TERO. This case law has provided the basis for tribal ordinances applicable where a proposed project crosses a reservation. TERO is designed to retain for tribal economies, to the extent possible, the potential benefits of all economic activity performed on reservations.

TERO may also be invoked if a proposed project would be located off a reservation but near enough to affect its economic well-being. In these circumstances, employment for tribal members would be pursuant to a voluntary agreement with the employer. TERO would apply only if, in response to a tribal initiative, the project manager would be willing to extend hiring preference to tribal members.

Our primary responsibility in conducting the environmental review of TRRC's proposal is to comply with the procedures and

goals of NEPA.³⁴ Our discussion of employment rights in the DEIS -- alerting the public of the possibility that the Northern Cheyenne tribe and other tribes may request employment preference -- met our responsibilities under TERO.

Economic need. A number of issues were raised about the economic rationale and viability of the project. Many view the proposed TRRC extension as unnecessary, and some argue that it would unduly favor Wyoming coal at the expense of Montana's environment and job and coal markets. Other comments pointed out that TRRC's original 89-mile line has not been constructed, and questioned TRRC's intention regarding the entire rail line operation. Some noted that although BN lines appear to be a necessary component of any TRRC route to deliver this coal, there is no evidence that BN has agreed to any terms under which the traffic would be jointly handled by the two carriers.

These comments, and a detailed list of all the comments pertaining to the economic rationale of the proposal that arose during the environmental review process, have been provided by SEA to the Board, which is responsible for analyzing the merits of the proceeding and investigating questions of economic need. Accordingly, we will not discuss those comments further here.

Fire safety. Questions have been raised concerning the possibility that trains operating along the proposed extension could start fires, and that the average size of these fires might exceed five acres, the figure predicted in the DEIS. Although statistical data indicate that five acres is an average sized railroad-caused fire, variables such as the amount of vegetation, weather patterns, ability of firefighters to traverse difficult terrain to reach the fire, and the quantity and quality of existing fire-fighting equipment preclude a more definite analysis of the fire risk for this proposal.

Because substantial fire-related concerns have been raised by the public here,³⁵ we recommend the following additional mitigation conditions in any certificate:

TRRC will negotiate the placement of fire suppression equipment with local ranchers.

³⁴ As we stated in the DEIS at p. 4-103 n.19, "as long as the ICC has considered the socio-economic and cultural impacts of a project of Native Americans, it can approve a project . . . despite claims that the proposed project would disrupt important cultural and economic aspects of tribal life."

³⁵ A full discussion of our investigation and findings is included in Appendix E.

TRRC will maintain a serviceable access road and/or access points along the right-of-way in consultation with local fire officials.

TRRC will develop and install a mobile communications system between the local volunteer fire fighting units, train crews, and ranchers with property adjacent to the right-of-way.

Impacts on local ranches. Like the mitigation plan for the previously approved 89-mile rail line, the conditions we have developed here set out the general methods by which TRRC would compensate landowners for losses due to rail construction and operations. Of course, most of the site specific concerns raised would need to be negotiated between the railroad and the affected landowners.³⁶

The railroad has agreed that right-of-way acquisition will be designed to minimize the effect of the railroad on day-to-day operations of ranches. It notes that unavoidable direct and indirect land loss is subject to negotiation and compensation. Similarly, the railroad has agreed to work with individual ranchers so that capital improvements such as fences, wells, corrals, and irrigation systems on acquired land would either be replaced, relocated, or financially redressed.

Access restrictions continue to be a major concern to adjacent ranchers. TRRC currently anticipates 25 cattle passes will be needed and acknowledges that the final number will be based on discussions with individual landowners. Conforming to the 89-mile Mitigation Plan, TRRC plans to employ a railroad representative during construction and after the railroad becomes operational to address problems from affected landowners and concerned citizens. Overall, where unavoidable impacts to local ranches would be severe, they would be compensable on an individual basis.

Riverbank protection. EPA (Montana Office) recommended more innovative means of stream or riverbank protection than the standard rock rip rap. It requested that logs, root wads, and vegetative plantings be intermixed with the rock placement along the Tongue River where bank stabilization sites are planned and where bridge sites and encroachment occur. This would provide a more natural appearance to the bank stabilization structures. EPA would also require shading and cover for fish and wildlife, and it provided specific diagrams illustrating how to implement these measures. See Appendix F.

³⁶ Negotiations between the railroad and affected landowners for acquisition of rights-of-way are governed by Montana law requiring equitable negotiations.

TRRC argued that EPA's specific recommendations would be unworkable due to the variable flows and steep cutbanks of the Tongue River. In response, EPA stated that similar mitigation measures have been successfully implemented along other comparable rivers. Based on additional consultations with EPA, we will recommend the following condition:

TRRC shall adhere to EPA's designs for riverbank stabilization.³⁷

Aquatic resource studies. Some concerns have been raised about the studies performed for the DEIS to evaluate the aquatic resources of the Tongue River. Nevertheless, we think that aquatic resources, impacts and mitigation have been adequately analyzed, and that appropriate conditions requiring future investigation and mitigation are in place. The DEIS thoroughly discusses aquatic resource issues and identifies the areas where potential impacts most likely would occur.

The most significant impacts to aquatic resources during construction would occur where the railroad grade would infringe on the stream bank or stream bed, such as at bridge crossings and where rip-rap is required for stream bank stabilization. The DEIS also discusses impacts to aquatic resources from derailments and spills. The mitigation we are proposing would require TRRC to conduct detailed site specific aquatic resource sampling prior to construction and upon completion of final engineering, and to develop mitigation measures in consultation with the appropriate Montana state agencies, principally MT FWP. The conditions also outline TRRC's responsibility in emergencies such as derailments, oil spills, and toxic substance spills.

Coal spills. Current evidence indicates that the low sulfur coal mined in southeastern Montana is non-toxic in water and would not leach or give off toxic substances, especially if the coal is in lump form. Leaching problems have been known to occur only in coal slurry pipelines, where coal is finely ground and the amount of water is limited. If coal transported by train were to be spilled into the Tongue River, the coal would be lump coal and the water quantity would be relatively high.

The main concern with a coal spill directly into the river would be with turbidity. Any fine coal particles would be suspended and washed downstream, and the spill would be visible. Immediately after the spill the water would turn black. Because

³⁷ In implementing these measures, TRRC should contact EPA for further consultation. The address is: EPA, Region VIII, Montana Office, Federal Building, 301 S. Park, Drawer 10090, Helena, Montana 59626-0096.

clean-up activities would likely stir up any settled material, the water color would again become black until removal was completed. Impacts to fish would be similar to that of increased sedimentation in the water, as discussed in the DEIS.³⁸ Water turbidity and sedimentation adversely affect fish by clogging and abrading gills, smothering eggs, and reducing oxygen levels in the water.³⁹

The mitigation conditions we are recommending here would require TRRC to develop and implement an Emergency Response Plan designed to specify the means of responding to any spills or other emergencies.

Herbicides. As discussed in the DEIS, herbicides may be used as one measure to reduce noxious weeds and to keep the right-of-way clear of vegetation to prevent the spread of fire. TRRC would use only nontoxic herbicides, where chemicals could run off into a water course. Herbicides would not be transported in rail cars on the rail line, but would instead be transported by truck and be applied by maintenance crews.

Use by BN of its Huntley Line. Though the BN is not a party to this proceeding, and has not commented about the future of the Huntley Line, TRRC stated in its post-hearing brief (November 2, 1992) that it is highly unlikely that BN would abandon the line if the extension were to be constructed. TRRC emphasizes that TRRC would be diverting only eastbound coal traffic from BN's Huntley line, and that TRRC operations would not affect BN's westbound traffic. TRRC added that a growing demand for low sulfur coal in the Pacific Northwest and a growing export coal market could result in little net reduction in coal traffic over BN's Huntley line.

Adequacy of notice. NEPA procedures require that before agencies make decisions, environmental information must be made available to public officials and citizens. Contrary to the concerns raised in some of the comments, ample notice and information has been provided to the public here. As required by NEPA, we have involved affected or interested federal, state, and local government agencies, special interest groups, landowners, and interested individuals in all aspects of our environmental process. In the initial stages, we conducted scoping meetings locally to ascertain the public's concerns about potential

³⁸ Information about coal spills was collected primarily through telephone interviews with Wayne Van Voast, hydrologist, Montana Bureau of Mines; Howard S. Peavy, Montana State University; Bob Renke, Mike Pasichnyk and Tom Ellerhoff, Montana Health and Environmental Science.

³⁹ See DEIS, pp. 4-71 to 4-82.

environmental impacts of the proposal. We provided information about the proposal at these meetings.⁴⁰

SEA staff members met with Northern Cheyenne tribal representatives and contacted by letter all other potentially affected tribes. The ICC held oral hearings in Montana and Wyoming to hear evidence and testimony from the public on both economic and environmental issues. The DEIS and SDEIS were served on everyone on the service list to allow for public comment. Notice of both the DEIS and SDEIS also was published in the Federal Register, as notice of this FEIS will be.

Moreover, in November 1989 and again in February 1990, TRRC contacted the affected landowners on the TRRC preferred route either by personal interview or mail or both. TRRC provided maps and information about the proposed project. In October 1992, TRRC also contacted affected landowners along the Four Mile Creek Alternative route.

Flooding impacts. MT DNRC was concerned that the five additional river crossings (between the dam and Four Mile Creek) that would be required by TRRC's preferred route could restrict the flow of flood waters, and increase the flood risk to homes below the dam. It believed that flood level assumptions in the DEIS, based on the U.S. Army Corps of Engineers HEC-1 flood modelling, were inadequate. It requested additional analysis based on both the present water levels of the dam and the increased water levels after reconstruction.

Accordingly, TRRC directed its hydrological consultant, Western Water Consultants, Inc. (WWC), to work with MT DNRC in producing more analysis of the potential flood impacts. WWC prepared a supplementary hydrologic analysis concluding that the railroad bridges would have a minimal impact on flood levels at the homesites studied. Upon review of this material, MT DNRC agreed with WWC's findings.

MT DNRC was also concerned about unrestricted, 24-hour-a-day access to the Tongue River Dam for operational maintenance and in case of emergency. TRRC's preferred route as originally designed would have blocked MT DNRC's road access to the dam. Although

⁴⁰ Formal notice of the scoping meetings was sent to everyone on the service list for the previously authorized 89-mile line. Publicity about the meetings was also broadcast on a local radio station and published in local newspapers, and representatives of the Northern Cheyenne Tribe were contacted by telephone. The final scope of the DEIS was published in the Federal Register and sent to everyone on the service list (which was augmented to include attendees of scoping meetings).

TRRC has adjusted its preferred alignment westward, access could still be blocked during railroad construction. Therefore, we recommend the following additional condition if one of the construction options is approved:

TRRC will assure 24-hour-a-day access to MT DNRC for the reconstruction and maintenance of the Tongue River Dam by construction of temporary roads or by other reasonable alternatives.

Finally, MT DNRC was concerned that in building its preferred alignment, TRRC would need to blast a major cut one mile west of the dam. MT DNRC requested that, to preserve the structural integrity of the dam, TRRC's geotechnical investigation program be closely coordinated with MT DNRC. Therefore, we recommend the following condition to any construction certificate:

Before any construction begins, TRRC will coordinate development of its geotechnical drilling program in the vicinity of the dam. Once the results of the drilling analysis are completed, TRRC (with input from MT DNRC) will determine the best engineering method for removal of the cut material. If blasting is necessary, the charges will be designed so that there will be no adverse affect to the integrity of the Tongue River Dam.

Derailment numbers. Several ranchers and residents commented upon the derailment figures provided in the DEIS. Specifically, they noted that the projected derailment figures for the 89-mile line in the 1983 DEIS differ from those in the 1992 DEIS. The derailment figures in the 1983 DEIS reflected projected operation of the 89-mile line. In the 1992 DEIS, the derailment figures considered the increased operations anticipated over the 89-mile line and the 41-mile extension. To update our prediction of the number of likely derailments, we used current, national derailment rates obtained from the Safety Office of the Federal Railroad Administration (FRA).

The national average potential for derailments has been updated from a factor of 1.66 (used in the DEIS) to a factor of 3.40 derailments every 1 million train miles. The result would be that we would predict .405 derailments every 1 million train miles for TRRC's preferred route, and .510 derailments every 1 million train miles for the Four Mile Creek Alternative. Thus, the derailment factors for the two routes are predicted to be very similar, and well below the national average, despite the relatively steep 2.3 percent grade extending for 3.8 miles over the Four Mile Creek Alternative. If TRRC adheres to appropriate operating procedures, safe operations on that route should not be a problem.

Oil spills. One commentor suggested that more discussion of diesel fuel spills (due to construction or derailments) was needed, because of the potentially large size of spills, petroleum products toxicity, and the critical nature of Tongue River habitat. He suggested that the DEIS made conflicting statements regarding the toxicity of petroleum spills and the impact to aquatic life, e.g., fish (see DEIS, p. 5-4 versus p. 4-79).

It is difficult to develop definitive criteria for oils, because they contain thousands of organic compounds with varying properties and toxicities. The petroleum product of most concern relative to the TRRC extension is diesel fuel. The discussion in the DEIS (p, 4-76, 4-79-4-81) regarding the potential effects of diesel fuel spills in the Tongue River adequately addresses diesel fuel toxicity. SEA relied upon several publications there that we believe are reliable.⁴¹

We disagree with the assertion that our discussion in the DEIS (p, 5-4, 4-79) is internally inconsistent. Although acute fish kills are not expected with diesel fuel spills, we do consider diesel fuel to be a toxic substance requiring careful handling to minimize potential impacts to the aquatic environment. Accordingly, the conditions we are proposing would require TRRC to develop an emergency response plan.

Job loss numbers. Several labor representatives disagreed with the DEIS' estimates of BN job losses at Sheridan and Forsyth. One raised the possibility of job losses at Glendive. One individual suggested that the DEIS should have emphasized the significance of relatively high income railroad jobs in the Sheridan economy.

According to the DEIS (p. 4-18), the proposed extension could displace a total of 56.8 BN jobs. Sheridan, Wyoming, could experience 42.3 displacements; Forsyth, Montana, could experience 14.5 displacements. No evidence was presented during the hearings or during the comment period that indicates that the figures should be changed or that we should expand the area of affected workers to include Glendive.

In any event, when specific losses for Forsyth and Sheridan jobs are tallied, there is little difference between our estimates and those of the DEIS commentors. Commentors often

⁴¹ We discussed the potential for diesel fuel spills during both the construction period and the operation period. On pp.4-79 through 4-80, the impact of spills from heavy equipment during construction is addressed; on pp. 4-76 and 4-81 the impact of spills in the event of train derailment is analyzed.

cited the potential for loss of "60 Maintenance of Way" jobs in Sheridan and the "10 Maintenance of Way" jobs in Huntley. Because of track maintenance requirements, the effects of the proposed extension on these jobs are difficult to estimate. The 60 Sheridan workers would include summer extra gang employees, who are temporary and live outside the Sheridan area.

The BN employment loss figures presented in the DEIS, however, should be reduced to reflect the 1991 agreement between BN and labor for two-member crews. Regardless of whether the construction is approved, BN will reduce the number of Sheridan employees from 325 to 250. As of March 1993 BN also reached a tentative agreement with the United Transportation Union on reducing crew sizes on its Montana northern line to two-member crews, which would reduce the numbers of BN workers now employed at Forsyth. The result is that the construction of the TRRC line would cause the loss of fewer jobs on BN.

Construction timing and fish spawning. Two individuals commented that the DEIS contained an inaccurate statement (p. 4-78) indicating that if construction were to occur near spawning areas in Hanging Woman Creek, impacts could be minimized by scheduling construction from April to June. We agree. In the DEIS, we described the nesting and spawning behavior of smallmouth bass and northern pike. Both species used Hanging Woman Creek as a spawning site during the months of April and May (see p. 2-14-2-15). Thus, we should have said that the scheduling of construction should avoid the months from April to June.

The mitigating conditions we propose would require that a construction schedule would be prepared, where possible and practical, for instream work at times that are least critical to the specific fishery at a site (p. A-18). TRRC would identify the specific fishery and evaluate spawning habitat potential at each proposed bridge location and at areas of proposed rip-rapping (pp. A-16 through A-17). TRRC would proceed with detailed, site specific inventory of potential impact sites upon the completion of final engineering and in coordination with state agencies, including MT FWP.

Soil erosion control techniques. A few ranchers expressed concern regarding the DEIS's assessment of soil erosion and its proposal for erosion control techniques. One individual disagreed that soil loss would be temporary. SEA understands that, once eroded, soils have been permanently displaced, and that the TRRC mitigation conditions would not include the replacement of eroded soils. To clarify the intended meaning, the sentence in question has been rephrased as follows:

During construction of either TRRC's preferred alignment or the Four Mile Creek Alternative, wind and

water erosion could result in losses of soils until erosion control measures are implemented.

This commentor also pointed to an error in the DEIS Mitigation Plan regarding measures proposed for slopes greater than 3:1 (p. A-24) indicating that serrations parallel to the slope should be made. The individual correctly pointed out that the serrations should be perpendicular, not parallel to the slope. The relevant proposed condition now reads:

On cut and fill slopes steeper than 3:1 but less than 2:1, TRRC shall construct serrations perpendicular to the slope to avoid erosion and to stabilize seed beds.

Another individual commented that the DEIS should have identified specific construction practices, such as the immediate application of mulch and the use of netting to hold mulch in place, to control soil erosion. We provided detailed discussions in the DEIS of erosion control measures of this type. The DEIS (p. 4-64) referred to the application of mulch as a construction practice and as an erosion control measure. We think the discussion in the DEIS is adequate.

Corps permits. Concerns have been raised regarding TRRC's obligation to obtain Corps permits. Because either construction alternative would involve bridge crossings over the Tongue River or its tributaries, TRRC would be required to obtain a permit from the Corps pursuant to Section 404 of the Clean Water Act before going forward with construction.⁴² Because permits would be required for the proposed project, the Corps requested that a completed Section 404(b)(1) evaluation be included as an appendix to this FEIS. The Corps' principal concern was that sufficient information be made available to determine the least environmentally damaging practicable alternative.

TRRC protested that it could not complete the Section 404(b)(1) evaluation now because needed information would be available only at the time of final engineering. SEA discussed this issue with the Corps and as a result, TRRC, with its subcontractor, WWC, prepared a jurisdictional wetlands delineation report of TRRC's preferred alignment. Upon review of that report, the Corps determined: (1) TRRC's preferred route would be reasonable given safety factors; (2) wetlands are not a significant issue; and (3) the report's findings should be

⁴² This obligation is discussed in the DEIS and in the Mitigation Plan. TRRC is also obligated to obtain other additional state permits from the local Conservation Districts, the Water Quality Bureau of the Montana Department of Health and Environmental Sciences and the Montana Department of State Lands.

included in the FEIS.⁴³ The Corps noted, however, that TRRC would have to obtain a Section 404 permit for the original 89-mile line, for which the Corps permit has now expired, in addition to a permit for any Board-approved rail alignment for the extension.⁴⁴

Historic properties. Some commentors have noted inconsistencies between the number of historic sites and structures identified in the text and the tables of the DEIS. These discrepancies are not significant. They are a result of counting properties that are listed in the National Register and those that are merely eligible for listing.

One commentor suggested that we identify the location of certain Native American sites. But we will respect the tribe's desire to protect the sacred nature of the sites by providing only their general locations. The proposed alignments have been plotted on maps and made available to all interested parties, including the Northern Cheyenne Tribe. We expect that, with the tribe's cooperation, any possible sites within the right-of-way would be properly identified, documented, and, if possible, mitigated in accordance with the proposed Programmatic Agreement (PA) if construction were permitted and carried out. See Appendix G.

⁴³ SEA's correspondence with the Corps and the wetlands delineation report are including in Appendix D.

The Corps also requested amendment of certain language in the DEIS Mitigation Plan (A-14, paragraph A.8.1(1)) pertaining to the Corps' permitting process. We agree. That language has been amended to read as follows:

(1) The Corps permits all activities involving the discharge of dredged, and/or filled material into a water of the United States. The Section 404 permit process requires detailed environmental data and construction data. When issued, Section 404 permits contain stipulations and conditions that limit environmental impacts to the greatest degree possible and require compensatory mitigation for unavoidable impacts.

⁴⁴ EPA (Helena Office) objects to the Corps' reissuing permits for the 89-mile line because it believes that TRRC has not considered practicable alternatives to the 89-mile alignment that would have less effect on aquatic ecosystems. That argument is more properly addressed to the Corps. We have already permitted the alignment for the 89-mile line.

**CHAPTER THREE
RECOMMENDED CONDITIONS**

INTRODUCTION

The recommended mitigation measures set forth below are based on SEA's independent analysis of the project, comments to the DEIS and SDEIS, the Biological Opinion and a proposed Programmatic Agreement (PA), and conditions either proposed or agreed upon by the railroad. We have incorporated by reference specified portions of the proposed Mitigation Plan that was set forth in the DEIS. The recommended mitigation measures set forth below reflect the changes discussed in Chapter Two of this FEIS, and other clarifying changes.⁴⁵

Conditions applicable to both the Four Mile Creek Alternative and TRRC's preferred route are listed first (section A). Additional conditions that are specific to Four Mile Creek Alternative are listed next (section B). Finally, we set forth those additional conditions that apply only to the TRCC preferred route (section C). If the Board approves construction and operation of either route, SEA recommends the following conditions:

**A. CONDITIONS FOR EITHER
CONSTRUCTION ALTERNATIVE**

LAND USE

- (1) TRRC shall negotiate compensation for direct and indirect loss of agricultural land on an individual basis with each landowner. TRRC shall assist landowners in identifying and developing alternate agricultural uses for severed land, where appropriate. TRRC shall apply a combination of alternative land use assistance and compensation as necessary and agreed upon during right-of-way negotiations.
- (2) Where capital improvements are displaced, TRRC shall relocate or replace these improvements or provide appropriate compensation.
- (3) TRRC shall construct right-of-way fencing along the entire line according to specifications suitable to the landowners and consistent with industry standards. TRRC shall negotiate special fencing needs with individual landowners.
- (4) TRRC shall install cattle passes (oval, corrugated metal structures, approximately 11 ft. high and 12 ft. wide at the

⁴⁵ Of course, TRRC must comply with all applicable federal, state and local regulations.

base) along the right-of-way to ensure passage of cattle under the rail line. TRRC shall work with landowners to identify appropriate locations for cattle passes and private grade crossings for equipment.

(5) During final engineering, TRRC shall work with individual landowners to avoid unnecessary conflict between construction activities and ranching operations.

(6) TRRC shall confine all construction activities to right-of-way and to the construction camps along the rail line, at locations to be negotiated between individual landowners and TRRC.

(7) TRRC shall require its contractors to assure that its construction camps are orderly. Upon completion of construction, TRRC shall return the camps to their previously existing use.

(8) TRRC shall appoint a representative, with direct access to management, to work with primary contractors, subcontractors, and landowners to resolve problems that develop during construction.

SOCIAL AND ECONOMIC

(1) TRRC shall make available to local governments and to the Northern Cheyenne Tribe all public data and studies that it is aware of concerning the facilities and services that may be required as a result of mine development.

(2) TRRC shall appoint a liaison between TRRC management and the Northern Cheyenne Tribe to ensure that tribal members receive an equal opportunity to secure temporary construction and full-time operational jobs with the railroad.

TRANSPORTATION

(1) During construction, TRRC shall encourage contractors to provide laborers with daily transportation to the work site from a central location.

(2) To the extent possible, TRRC shall confine all construction related traffic to a temporary access road within the right-of-way. Where traffic cannot be confined to this access road, TRRC shall ensure that contractors make necessary arrangements with landowners or affected agencies to gain access from private or public roadways. The access road shall be used only during construction of the railroad grade, after which construction shall be confined to the right-of-way.

(3) Where traffic along a public roadway may be disrupted during construction, TRRC shall comply with all requirements of the Montana Department of Highways (MDH) or other appropriate

agencies. In the absence of such requirements, TRRC shall endeavor to maintain at least one lane of traffic open at all times. Specific plans shall be developed by TRRC, in coordination with state and local agencies, to assure the quick passage of emergency vehicles. TRRC shall submit all construction plans affecting public roadways to MDH for review and approval.

(4) TRRC shall comply with MDH's *Manual of Uniform Traffic Control Devices* for work zone safety.

(5) TRRC shall equip all grade crossings with warning signs and devices, as deemed appropriate under MDH's Railroad Crossing Protection Policy.

AIR QUALITY

(1) TRRC shall subject all heavy equipment and vehicles used in the construction, operation, and maintenance of the railroad to regular inspection and maintenance to ensure that operation complies with manufacturer's specifications and that equipment is running as cleanly and efficiently as possible.

(2) When vegetation is removed from the right-of-way, TRRC shall clear areas only as necessary to mitigate impacts of wind erosion and fugitive dust.

(3) Where devegetation has taken place, TRRC shall begin revegetation as early as possible. Where immediate revegetation is not possible, TRRC shall implement alternative stabilization measures such as matting and mulching.

(4) TRRC shall suppress dust at all work areas by using water trucks, and shall make water available to local landowners, governmental agencies, or associations for these activities. TRRC shall conduct dust suppression activities regularly and frequently during the dry periods.

(5) TRRC shall conduct any open burning in strict accordance with local or other applicable regulations, and shall obtain all necessary permits and observe all necessary safety precautions.

NOISE

(1) To the extent practicable, TRRC shall schedule major noise producing construction activities during the weekday and daylight hours.

SAFETY

(1) TRRC shall adhere to federal and state construction safety regulations to minimize the potential for accidents. TRRC shall require its contractors to conduct safety meetings for their workers and to ensure that each person understands safety measures and procedures.

(2) TRRC shall develop an internal Emergency Response Plan consistent with Montana State plans authorized under Title 10, *Montana Code Annotated*.⁴⁶

(3) TRRC shall establish cooperative relationships with all federal, state, and local agencies with responsibility for disaster/emergency response. TRRC shall provide operational plans and copies of the emergency response plan identified above to such agencies and incorporate their comments as appropriate.⁴⁷

(4) TRRC shall develop a Wildfire Suppression and Control Plan for fires occurring on the right-of-way as a result of rail construction/operations or undetermined causes. TRRC shall include the measures relating to fire suppression set forth in the mitigation plan in the DEIS.

(5) TRRC will negotiate the placement of fire suppression equipment with local ranchers.

(6) TRRC will maintain a serviceable access road and/or access points along the right-of-way, at locations determined in consultation with the local fire officials.

(7) TRRC will develop and install a mobile communications system between the local volunteer fire fighting units, train crews, and ranchers with property adjacent to the right-of-way.

⁴⁶ This includes a roster of agencies and specific persons to be contacted for specific emergencies, procedures to be followed by particular rail employees, emergency routes for vehicles, and location of emergency equipment.

⁴⁷ These agencies include: Disaster and Emergency Services Division of the Department of Military Affairs, Helena; rural fire departments along the route; local ambulance and emergency medical services and air evacuation services in Billings and Sheridan; the Montana Department of Health and Environmental Sciences (especially the Water Quality Board); MT FWP; MT DSL, and Administration Bureau; MT DNRC, Water Resources Bureau; the Northern Cheyenne Tribe; BLM or U.S. Forest Service; and other local agencies or groups which are identified as key to disaster response.

(8) TRRC shall develop, in cooperation with appropriate federal, state and local agencies, a plan to prevent spills of oil or other petroleum products, both during construction and operation and maintenance. TRRC's plan shall include measures pertaining to oil spills set forth in the mitigation plan in the DEIS.

(9) TRRC shall develop guidelines based on the tasks to be accomplished by individual contractors, including: (a) steps during refueling to guard against overflows, (b) storage of fuel only in metal storage tanks surrounded by impervious dikes capable of containing greater than the capacity of the tank, (c) removal of waste oil to appropriate sites, and (d) maintaining equipment in good running order and conducting routine maintenance activities.

(10) If an herbicide spill occurs, TRRC shall respond using the same general approach discussed above. TRRC shall immediately contain the spill, notify the appropriate agencies, and implement appropriate clean-up procedures.

HYDROLOGY AND WATER QUALITY

(1) To assure that overall water quantity and quality are not unnecessarily altered or diminished by this project, TRRC shall submit detailed permit applications to the applicable agencies, including the Corps, local Conservation Districts, the Water Quality Bureau of the Montana Department of Health and Environmental Services, and any other applicable agencies.

(2) TRRC shall secure applicable permits from the Montana Department of State Lands (MT DSL) for bridge crossings over the stream bed of the Tongue River.

(3) TRRC shall consult with EPA to implement EPA's river bank stabilization methods (see Appendix F.)

(4) TRRC shall ensure that all culverts and other drainage structures installed at ephemeral and perennial stream crossings will be designed to pass the projected 25-year flood.

(5) Where possible, the route shall be designed to avoid the flood plain. Where the railroad grade does infringe upon the flood plain, TRRC shall install drainage structures to assure that the grade does not restrict or reroute the 25-year flood.

(6) Construction of all stream crossings, including bridges and culverts and activities requiring stream bank encroachments (rip-rap, for example), shall occur during periods of low or no flow in the streams affected.

AQUATIC AND TERRESTRIAL ECOLOGY

TRRC shall participate as a member of the Multi-agency/Railroad Task Force (Task Force), which will advise, assist and coordinate with TRRC in accomplishing the mitigation measures set forth in the Mitigation Plan in the DEIS addressing aquatic and terrestrial ecology.⁴⁸

CULTURAL RESOURCES

(1) TRRC will comply with the provisions of the proposed PA (Appendix G, currently under negotiation), or a final PA, if one is executed.

(2) TRRC, in the preparation of the cultural resource inventory described in the PA, shall invite Northern Cheyenne tribal representatives to identify and compile a list of traditionally-important plants occurring in the area of potential effect and of gathering sites and access points for these plants. TRRC shall use this information in considering the need to protect and assure continuing access to these plants.

TONGUE RIVER DAM RECONSTRUCTION

(1) During construction of the rail line, TRRC shall provide 24-hour a day access to the MT NRC for the construction and maintenance of the Tongue River dam either via the construction of temporary roads and/or flagging devices or by other reasonable alternatives.

(2) Before construction, TRRC shall coordinate development of the geotechnical drilling program near the dam with MT DNRC. Once the results of the drilling are completed, TRRC along with input from MT DNRC, will determine the best engineering method for removal of the cut material. If blasting is necessary, the charges will be designed to insure that there will be no adverse affect to the integrity of the dam.

B. ADDITIONAL CONDITIONS UNIQUE TO THE FOUR MILE CREEK ALTERNATIVE

Safety

(1) Train movements will require strict adherence to safe operating practices because of the descending 2.3 percent grade,

⁴⁸ For reclamation on cut and fill slopes TRRC shall construct serrations perpendicular to the slope.

such as the use of seven locomotives at no more than 10 miles per hour for the descent.

Wildlife

(1) TRRC (in cooperation with MT FWP) will expand its ground and air survey program to include seasonal surveys showing where pronghorn are concentrated and their distribution and movement. From this information, TRRC shall assess and minimize impacts from the proposed right-of-way.

(2) TRRC will place fencing to accommodate seasonal migration, in compliance with the BLM Fencing Handbook, to protect ranching operations, while allowing for pronghorn movement.

C. ADDITIONAL CONDITIONS UNIQUE TO TRRC'S PREFERRED ROUTE

Land Use

(1) TRRC shall realign the access road for the Tongue River Reservoir State Recreation Area and, where necessary, will install public grade crossings to maintain access to the area.

(2) TRRC shall assist an individual, whose cabin in Cormorant Estates will be displaced, in relocating to another site within that subdivision.

Wildlife

(1) TRRC shall adhere to all terms and conditions in FWS's Biological Opinion (see Appendix C).

F.D. 30186 (SUB NO. 2)

TONGUE RIVER RAILROAD COMPANY'S PROPOSED EXTENSION BETWEEN
ASHLAND AND DECKER, MT

FINAL ENVIRONMENTAL IMPACT STATEMENT

APPENDIX A

COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

October 15, 1992

Dana White
Section of Energy and Environment, Room 3214
Interstate Commerce Commission
Washington, D. C. 20423

Re: Finance Docket 30186 (Sub No. 2)

Dear Ms. White:

As the owner of property in the Cormorant Estates at Tongue River Reservoir, we are writing to protest the establishment of the Tongue River Railroad Company's additional rail line from Ashland to Decker, Montana. We particularly protest the preferred alignment that is located directly beside the reservoir.

We protest the development of this rail line for several reasons. As stated in the environmental impact study, the use of the reservoir for recreation would be severely diminished especially with the severing of the access roads. Throughout the summer months, this particular area receives little rain therefore the land is very dry. Trains traveling through this dry land present a high fire danger. We question the need for such an extension of the rail line when the original line has not been developed.

The main reason we protest the development of the preferred alignment is that this railroad would pass through our property causing the need to move our residence. We have spent much time and money over the past years to build this home and improve the area. We have a well with water rights, which the other two homes in this area are not able to have. We have also buried our power line in order to maintain the ambience of the area. Even though we are the legal owners and registered with the Big Horn County as the owners, we have never been contacted by the Tongue River Railroad Company regarding their plans to move our home and/or dissect our property. Also, we have received no information regarding the location of the stated relocation parcels and their appropriateness for our needs. This neglect on their part seems to be quite dishonest and possibly misleading to those who are to approve or disapprove their plans.

Our land was purchased as recreational land, not agricultural land, therefore the \$162.00 per acre cost is highly inappropriate to its value as recreational land and way below our purchase price. The development of this rail line, as stated in the environmental impact study, would cause a devaluation of the property. This would then cause a large financial loss to us.

9/7/92

Dana White
Section of Energy and Environment
Room 3214
Interstate Commerce Commission
Washington, D.C. 20423

Re: Finance docket 30186 (sub no. 2)

Dear Sir,

I am writing to comment on the proposed Tongue River Railroad Ashland to Decker rail line draft EIS.
I urge adoption of the rail line route that would have the least adverse affect on the environment. At this time it appears the Four Mile Creek Alternative is that route. I urge all possible measures be taken to avoid or if they cannot be avoided mitigate any adverse affects on the environment. The mitigation measures indicated in the draft EIS under the Four Mile Creek Alternative seem reasonable.

Sincerely,

Duane Claypool
Duane Claypool
911 S Sutton
Miles City, MT. 59301

Dana White letter - page 2

Since the Tongue River Railroad Company has failed to contact the owners of a home that they plan to move, we question their honesty in dealing with all of the people and organizations that will certainly be affected by this development.

We want to thank you for the opportunity to voice our objection to this rail line and hope that you will decide to deny the Tongue River Railroad Company's request for an extension of the rail line from Ashland to Decker, Montana.

Sincerely,

Maurice E. Bousquet
Maurice E. Bousquet
2222 Rehberg Lane
Billings, Montana 59102
(406)656-0255

Lillian H. Bousquet
Lillian H. Bousquet
2222 Rehberg Lane
Billings, Montana 59102
(406)656-0255

cc: Mr. Thomas Ebzery

STERLING A. DAY
JOHN F. DAY
PHONE 907-476-6666



800 888
SHERIDAN, WYOMING
80000

October 5th, 1992

Dana White
Room 3214
Section of Energy & Environment
ICC Building
12th St. & Constitution Avenue
Washington, D.C. 20423

Gentlemen:

We are absolutely opposed to the 42-mile extension of the Tongue River Railroad from Ashland, Montana to Decker, Montana. We own private land in Cormorant Bay Estates on the south end of the reservoir and this railroad would have a great damaging effect on our land and property value. We have planned to build cabins on this property for our retirement as it is a very beautiful and scenic area and we do not want any commercial development on it.

If the railroad desires an extension we sincerely advise that an alternative route be considered that will not have such a devastating effect on the environment around Tongue River Reservoir and Cormorant Bay Estates.

We sincerely hope that you give this matter your most urgent attention and keep us advised accordingly. Thank you for your cooperation and patience on our behalf. Thank you.

Land-Owners:

John A. Day *John A. Day*
Ericko E. Day *Ericko E. Day*
Terrance Poland *Terrance Poland*
Deanna George *Deanna George*
Katsunaki Tetsuishi
Eiiko Tetsuishi

Sincerely,

John A. Day & Associates
Land Owners-Cormorant Bay Estates

32 Pine Lane
Sheridan, WY 82801
September 3, 1992

Dana White
Section of Energy and Environment
Room 3114
Interstate Commerce Commission
Washington, D.C. 20423

RE: Proposed Tongue River Railroad - (Finance Docket No. 30126
(Sub No. 2))

Dear Ms. White:

The purpose of this letter is to comment on the proposed Tongue River Railroad (TRRR) in general and the draft environmental impact statement in particular.

As one of the 22 landowners affected, I wish to express my opposition to the proposed railroad. My opposition is based upon the following rationale:

A. ~~Capital Investment~~ - I am a fourth generation resident of the Birney/Rainbow area. As such, I was raised in Birney as came to love the unique lifestyle the valley affords. Although I left the area to join the US Army shortly after college graduation, I was always determined to return and eventually retire there. Consequently, when I was afforded the opportunity to purchase my parent's small farm in 1978, I jumped at the chance. I looked forward to a peaceful and tranquil retirement on my boyhood home. That peace and tranquility will be irrevocably shattered by a railroad that will pass within 100 feet of my house and destroy the most productive part of my farm.

B. ~~Land Use~~ - I currently own 72 acres of river bottom land one half mile south of Birney, Montana. My holdings are directly in the path of the railroad. Of this 72 acres, 33 acres are under a very sophisticated irrigation system. This irrigation system was installed at a cost of over \$21,000 or 26¢ per acre. While the appearance of the land would appear to be strictly agricultural, it is in fact a retirement retreat. The 120 ton per year alfalfa hay crop was intended to supplement retirement pay. My decision to spend thousands of dollars on these improvements was not driven by economic gain but by location. I would never have spent that amount of money had it not been my boyhood home. The railroad right of way directly intersects several seven of my most productive acres. In addition, blueprints furnished by West Resources indicate that the county road will impact another eight acres. Furthermore, those acres will intersect by buried irrigation pipelines under the entire farm

drain valves and airlock devices is in fact a mechanical system. Furthermore, the worst case analysis of only 70 impacted irrigated acres on the entire line is laughable. My farm contains 33 prime irrigated acres; all are impacted. Fifteen prime irrigated acres are covered by right of way or county road realignment. The remaining 18 will be severely degraded because the pipeline which services them will be intersected. Furthermore, reduction of the irrigated portion of the farm from 33 to 18 acres makes the farm impractical to operate.

C. pg 4-5 - Displacement of Capital Improvements. Again, this paragraph makes a false statement when it states that no mechanical irrigation systems are impacted. As discussed above, at least one substantial capital improvement has been impacted by the proposed TRRR.

D. pg 4-5 - Effect on Agricultural Productivity. The assumption of an overall value for agricultural land of \$162 per acre is not credible. Those numbers are taken from 1987 data during the bottom of the Montana agricultural depression. Since that time, the market for ranch land has strengthened considerably. Furthermore, the rate is skewed by the inclusion of very large parcels with little irrigated acreage. The 1215 acres taken out of production directly by right of way is only a small part of the loss of productivity. When county road realignments, loss of capital improvements and the effects of severance are considered, the losses are many times the \$222,912 cited in the EIS.

E. pg 4-5 - Impacts to Other Land Uses. While the primary use of my property would appear to be agricultural, it is fully as much recreational as agricultural. I enjoy hunting and fishing and from time to time, have derived income from letting other sportsmen use the property. Furthermore, it has been a source of indirect revenue to me in that I have used the property to entertain certain clients of my sporting business. The income derived from these clients has produced income to me many times more than the hay raised generated by the agricultural production. As previously stated, I have always intended the property to be a retirement estate. The existence of the railroad would destroy these non-agricultural uses. The EIS totally ignored any land use other than agricultural in its estimate of value loss. ~~These impacts are~~ ~~unmentioned~~ ~~in the~~ ~~entire~~ ~~EIS~~ ~~report~~.

The draft EIS as issued is totally inaccurate, biased and obviously designed to downplay the environmental and cultural impacts to the Tongue River Valley. My small farm is only one of the many ranches and farms affected by the railroad. In many respects, these are getting even. The obvious and widespread misstatements in fact in the draft EIS on the entire portion of the railroad which crosses my property, if the EIS is as fair to the rest of other property owners as they are on me, then the entire EIS is biased.

unusable. The net result is the direct loss of 15 acres of prime irrigated land and the indirect loss of another 18 acres. The statement in the Environmental Impact Statement (EIS) that no prime agricultural property will be affected is clearly incorrect. Furthermore, existence of the railroad clearly makes the entire property untenable for its primary purpose - a retirement retreat.

C. EIS Inaccuracies -
1. Page six, table 4-1 (Summary Impact Table):

a. Land Use. Lists total irrigated acres impacted under the four mile alternative as only 16 acres. I can demonstrate that 15 irrigated acres will be lost on my property alone. The EIS is misleading in that it only counts acres lost to the 200 foot right of way. It does not count acres lost due to the relocation of the county roads on irrigated land. I contend that this draft EIS was done with 1985 data and includes no improvements since then.

b. Additional Land Lost (acres). This section lists additional land lost due to irrigation impact on the entire line as only 20 acres. Again, I can demonstrate that an additional 18 irrigated acres will be lost on my farm alone due to the pipeline severance. This is not included in the EIS.

c. Affected Landowners. This section apparently lumps me in with the agricultural land owners since the only landowner not listed as purely agricultural is Cormorant Estates. In fact, I should be included as a retirement estate rather than purely agricultural. I was never interviewed by the EIS preparer to determine my intentions for my property.

d. Existing Improvements Affected. This section is extremely misleading in that it fails to count as improvements thousands of dollars in buried pipelines on my property. Furthermore, it fails to count the two houses on my property as affected, while they will not be in the right of way, they will be uninhabitable due to noise and pollution effects. The two houses are very close to 70-42A contour of which this EIS says there are none.

2. Paragraph 4.1.1.1 (Construction Right of Way):

a. pg 4-1 - Acquisition. This paragraph contains a serious misstatement of fact when it says only 2.35 acres of prime farmland would be affected. As demonstrated above, 15 acres will be directly affected and another 18 indirectly affected by this section on my farm alone.

b. pg 4-1 - Severance. This paragraph makes several false statements. It alleges that no irrigated farmland with mechanical systems are affected. I contend that a \$22,000 buried pipeline, complete with sophisticated alfalfa seeders,

I urge that the draft EIS be found invalid and the "NO BUILD" alternative be adopted.

Respectfully submitted,

Forrest D. Dennis
Forrest D. Dennis
Carroll E. Dunsmuir
Mail Phone - 307-672-1434
Home Phone - 307-674-7335
Fax Phone - 406-384-6220

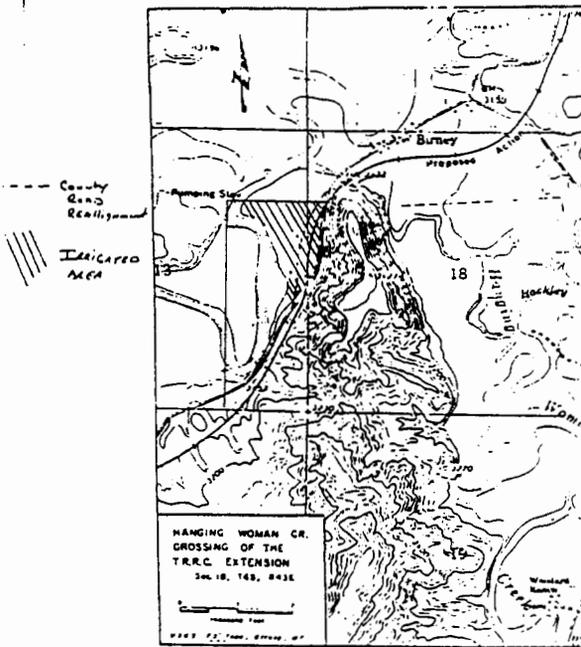


Figure 3-4 Hanging Woman Cr. crossing of the T.R.R.C. Extension

3-7

- 4.8.2 No contingency plan has been developed in the event of a diesel, coal or herbicide spills. Thus it is impossible to comment upon the adequacy of such a plan. This needs to be corrected for the final EIS. The DEIS states that a derailment is relatively rare. This is untrue as any railroad worker will tell you. Derailments are commonplace. The contingency plan and EIS need to take this into consideration. Furthermore no mention is made of compliance with Montana State Water Quality Law which explicitly states a policy of non-degradation of water quality. It appears the proposed railroad would be in violation of this law.
- 4.8.1.1 Spawning grounds of fisheries in the Tongue River have not been assessed. The locations of spawning grounds needs to be located for the final EIS.
- 4.8.1.3 Mitigation measures to offset sedimentation impacts need to be assured, not regarded as a "possibility."
- 4.8.1.1 Wetlands
A detailed review of wetlands needs to occur in the final EIS process in order to be in compliance with NEPA, not after the decision has been made. There is no wetland mitigation plan in place. This needs to be corrected in the final EIS, including which areas are suitable for wetland mitigation. The DEIS refers to Hanging Woman Creek as "extremely low or non-existent after spring runoff." This is untrue. The final EIS needs to take a closer look at Hanging Woman Creek as a viable stream and wetland habitat. Again this incorrect assessment of the physical environment indicates an inadequate DEIS.
- 4.12 Noise
No baseline data of decibel levels has been recorded for the proposed route. Therefore it is unknown if sensitive receptors would experience a 4 decibel increase. Baseline data needs to be collected for the final EIS.
- 4.13 Cultural Resources
No survey has been made of the cultural resources, i.e. burial sites, battle sites, lithic sites and others. An extensive survey needs to be done before impacts to these sites can be assessed. This needs to occur in the EIS process. The proposed ROW would sever Northern Cheyenne "spirit paths" crucial to Cheyenne religious practices and restrict access to religious sites. Since most sites overlook the Tongue River, construction of the railroad would make religious practices near impossible at these sites. This would be in violation of the Native American Religious Freedom Act. Birney Village is one of the most traditional native villages in the United States. The proposed railroad would severely change

Greg Gordon
1020 1/2 Briar
Missoula, MT 59802
(406) 542-2287
September 7, 1992

Comments on Tongue River Railroad Draft EIS
Finance Docket 30186 (sub-no.2)

Sec 4.10.1.3 Threatened and Endangered Species
The FWS should prepare the Biological Assessment during the EIS process, not after the proposed extension has been approved. Approval of an EIS without conducting a Biological Assessment is a violation of the letter and spirit of NEPA and the ESA as upheld in *Connor v. Burford 8th Circuit Court, 1988*. Information on species of concern is inadequate. Numerous other bald eagle nests exist along the Tongue River that were not identified in the DEIS. This leads me to believe that the initial survey was haphazard and inadequate. The effects of the railroad on nesting birds is not known, neither are the long term effects from displacement. Railroad construction and operation will have far greater impacts and cannot be likened to ranch and county road operations contrary to the statement in the DEIS. Suitable habitat for Peregrine Falcons and Black-footed Ferret needs to be taken into consideration as reintroduction efforts for these species continue. The DEIS does not do this. Peregrine research indicates nesting falcons are distributed by human activities within one mile of the nest site. The proposed railroad would adversely affect Peregrine Falcons. The proposed railroad would also affect Black-footed Ferret introductions to the Northern Cheyenne prairie dog complex. The effects of a railroad on Black-footed Ferrets are not known. However, habitat preservation is crucial for the species and the proposed action would destroy viable habitat for Black-footed Ferret.

4.10.1.1 Vegetation
No survey of threatened or endangered or species of concern plants has taken place. An extensive survey needs to be conducted for the final EIS as much of the area is in undamaged condition and the railroad would pass through crucial riparian zones. Damage to native grasses and water quality from herbicide spraying has not been adequately addressed.

4.10.1.1 Wildlife
Sage and Sharp-tailed Grouse jeks need to be identified and the impact assessed in the final EIS. No mention is made of the white pelicans inhabiting the area around Tongue River Reservoir. Again this indicates a haphazard and incomplete wildlife inventory. Also an inventory of reptiles and amphibians inhabiting the Tongue River and its tributaries has been done.

the way of life there likely causing increases in crime, racial conflict, alcoholism, depression, alienation. This would undermine traditional values and beliefs eliminating the identity of the Northern Cheyenne and contributing to their cultural demise. There is no contingency plan in the DEIS in the event of a petroleum, coal, or herbicide spill into the river which would affect Northern Cheyenne horses, gardens, wild medicinal and food plants growing along the river.

A.9.3.1 Wildlife
Aerial Survey and Ground Reconnaissance needs to take place during EIS process not after. Prairie dog towns need to be evaluated in terms of suitable habitat for reintroduction of Black-footed Ferrets whether or not ferrets are found. There are other bald eagle nests other than the ones indicated. The mitigation measures are inadequate with respect to Bald Eagles, Peregrine Falcons, and Black-footed Ferrets. The increased activity would affect the breeding capacity of these species. Acceptable mitigation would entail cessation of construction during breeding season. Destruction of Black-footed Ferret habitat cannot be mitigated. As outlined in *Clavert Cliffs v. Atomic Energy Commission*, the range of alternatives must speak to the no action alternative. The DEIS fails to consider "no action" as a legitimate alternative. Because numerous wildlife, noise, air and water quality, riparian, and cultural impacts cannot be mitigated, I urge the ICC to choose the No Action Alternative and deny the permit for the proposed extension.



THE BROWN CATTLE CO.

September 12, 1992

OCT 21 1992

BIRNEY, MONTANA 59012

(406) 984-6260

1 PART OF PUBLIC RECORD

Dana White
Section of Energy and Environment, Rm 3214
Interstate Commerce Commission
Washington, D.C. 20423

FINANCE DOCKET NO. 30186 (SUB. NO. 2)

TONGUE RIVER RAILROAD COMPANY - CONSTRUCTION AND OPERATION OF
ADDITIONAL RAIL LINE FROM ASHLAND TO DECKER, IN ROSEBUD AND BURLINGTON
COUNTIES, MT

Dear Sir,

My name is Art Hayes Jr. I am the president of The Brown Cattle Co. at Birney, MT. The only contact I have had with the Tongue River Railroad Co. has been to receive a vague map showing the proposed rail line route on our property only. The map does not show cattle underpasses, crossings or sidings.

The TRRC right-of-way will cut the ends off of the hills all along the approximate six miles that it goes through this ranch. These cuts will create cliffs that cattle and calves can not climb or descend. Their natural trails will have been cut off making it impossible to move cattle as the seasons require. Presently cattle using one pasture water primarily at the Tongue River as the only two wells have marginal water flows and the two reservoirs, which depend on heavy rains, seldom hold water. How will the TRRC provide water for 500 head of cattle that have been cut off from the river?

In our Section 24765RA2E pasture the railroad will pass over its only well and divide the pasture into two parcels. Will the TRRC replace the water and provide underpasses so cattle can utilize the whole pasture?

It is imperative that livestock be kept out of the railroad right-of-way. The type of fence that would stop crawling baby calves (woven wire bottom & barbed wire top) would also affect wildlife movement. What type of fence will the TRRC provide to protect livestock? Who will be responsible for maintenance? Who will be responsible for compensation to landowners for lost livestock? All gates should be made of steel and they should be able to be locked.

RECEIVED
OFFICE OF THE
ATTORNEY GENERAL
OCT 21 1992

Finance Docket No. 30186 (Sub. No. 2)
The Brown Cattle Co.
Sept. 12, 1992 page 3

ten years? If so, who did the survey, when and where? As a landowner I have never been contacted by anyone doing such a survey.

How does the TRRC intend to deal with the elimination of migratory routes used by big game populations as they feed along the river bottom and live in the breaks? Has the TRRC assigned a dollar figure to the loss of wildlife that will occur when habitat migratory routes have been destroyed? Landowners benefit from wildlife. Many ranchers provide outfitting services. Hunting opportunities that have benefited ranchers and sportsmen will now be very limited.

In the June, 1984 Final Environmental Impact Statement OSM-EIS-14, for the proposed Montco Mine, page IV-20, it states that Montco will apply to the DWR for a water use permit on the Tongue River and is discussing the purchase of about 400 acre-feet of water per year from the Tongue River. Then in the draft EIS on this Ashland to Decker railroad extension there is no mention of water needed for compaction during construction. I have been in contact with the DWR and they have no record of any application for the 400 acre-feet needed for the mine or any application for water needed for railroad construction.

As vice president of the Tongue River Water Users' Association, I want to point out that no water is now available for either of these projects from the present Tongue River Reservoir. How will any be available should the reservoir be enlarged as planned in the near future. The construction of this railroad will coincide with the construction of the enlarged Tongue River Reservoir. During one year of construction the reservoir will be drained and no water will be available for anyone. How much water does construction of the railroad require? If the TRRC does not have any water permits, where will they get water? How much would it cost to obtain water for construction? Has this cost been included in the cost analysis of the railroad? For that matter, how did the TRRC arrive at any cost analysis for this project with no accurate figures regarding crossings, sidings, fencing, etc.? How can they determine a cost of excavating the rail bed without having done any field work to confirm the exact composition of the rock strata?

Page 60, A.1.3 of the Final Environmental Impact Statement, Finance Docket No. 30186, for the construction of a rail line from Miles City to Ashland, discusses the need for additional sidings and double-track mainline installation on rail lines down line from Miles City. The TRRC should show whether Burlington Northern is willing to take on the expense of building even more sidings and double-track needed to handle the increased rail traffic of this extension.

When comparing the proposed Montco Mine EIS (OSM-EIS-14) and the proposed Tongue River Railroad Draft EIS, the maps show that the railroad will go right through areas Montco plans to mine. During part of the Montco Mine plan the only place the

Finance Docket No. 30186 (Sub. No. 2)
The Brown Cattle Co.
Sept. 12, 1992 page 2

The Tongue River railroad will render parts of needed pasture inaccessible. Will crossings and underpasses be provided where the landowner deems necessary for cattle and equipment movement? This ranch will require no less than eight crossings. Where will sidings be located? The landowners should be provided with that information.

Fires caused by rail traffic will be a constant threat. In the draft EIS the TRRC mentions providing "State of the art" fire equipment. Does that mean helicopters and a trained fire crew such as the Custer National Forest uses? TRRC should explain specifically just what equipment they will provide, where it will be stored and who will have access to it. How will landowners be compensated for pastures lost to fires?

Rail caused fires can easily spread to forest lands because of the proximity of the rail right-of-way to the Custer National Forest. At the same time, the right-of-way has also cut off the usual access routes to the forest lands. Will the TRRC carry insurance or maintain an escrow account to cover the cost of a major fire? Has the TRRC discussed with the Custer Forest personnel how a major fire on the Custer National Forest will be contained and paid for?

The TRRC's plan for weed control is inadequate. 2,4-D will not kill noxious weeds such as leafy spurge and spotted kno-weed. How does the TRRC intend to prevent the introduction of noxious and other weeds along the rail line? Should prevention fail, how will TRRC eradicate these weeds to stop them from spreading onto private lands or the Custer National Forest? How will the landowner be compensated for the cost of eradicating noxious weeds introduced along the rail right-of-way?

The draft EIS does not mention how the interruption of services caused by moving electrical and telephone lines during construction will be handled. In order to irrigate economically an uninterrupted power supply is necessary. How will the TRRC defray the costs to irrigators for time and water lost to power interruptions?

The value of land in Montana is not only based on its agricultural production but now also on its aesthetic and recreational values. This railroad will reduce our agricultural production and completely remove the aesthetic value thus the ranch's net worth will decrease. Will the TRRC pay ranchers for the loss of aesthetic and recreational values? Why has this issue not been addressed in the draft EIS?

Apparently the draft EIS was written without gathering any new data concerning wildlife and its habitat or on places of historical or archaeological significance. Most of the data used is twenty years old, outdated, and does not complete the construction area. Has the project area been surveyed for the presence of endangered species or critical habitat within the last

Finance Docket No. 30186 (Sub. No. 2)
The Brown Cattle Co.
Sept. 12, 1992 Page 4

railroad can go would be either through the mine plan, on the Northern Cheyenne Reservation or on the Custer National Forest. Please explain which one of these routes the TRRC plans to use during the mining operation. Is that part of the mine plan no longer being considered? Or is the Montco Mine not as important as portrayed?

Thank you for the opportunity to comment. Will you please provide more specific and comprehensive maps.

Sincerely,

Art Hayes Jr.

Marilyn S. Hayes
R Bar Ranch
Birney, Mont. 59011

September 12, 1992

Dana White
Section of Energy and Environment, Room 3214
Interstate Commerce Commission
Washington, D.C. 20423

FINANCE DOCKET NO. 30186 (SUB. NO. 2)
Tongue River Railroad Company-Construction and Operation
of Additional Rail Line from Alanland to Decker, in Rosebud
and Big Horn Counties, MT

Dear Sir,

My name is Marilyn S. Hayes. I own an older home in
the Birney townsite. This house was built from native
stone by a Birney pioneer.

With a railroad so close to the house, my property
values will decrease. The increased noise level alone
will cancel out all other property values.

Trains passing by the house will cause vibrations to the
stone house itself and also to the very ground on which
it sits. Repeated shaking by passing trains will
undermine the structure, causing cracks and crumbling
mortar.

Sincerely,

Marilyn S. Hayes

Marilyn S. Hayes

Dana White
Section of Energy and Environment, Room 3214
Interstate Commerce Commission
Washington, D.C. 20423

Finance Docket 30186 (Sub No. 2)

9/12/92

I William P. Carrel manage the FL
Ranch for owners Jack S. and Nancy
W. Carrel.

This operation runs 100 mother cows
plus additional support stock.

We run cattle on irrigated pasture as
well as native range land.

We have numerous cross fences and have
developed all possible water to ensure
enough grass with the number of cows
we run even on very dry years.

The proposed railroad extension crosses
our ranch in section 23 Township 7 south
Range 41 East, Rosebud County.

The proposed railroad runs through
our April and emergency grass pasture
This pasture is used one month of the
year normally. We purposely leave grass
in this pasture all summer fall and

winter to save on hay the
following spring. There is an extreme
fire danger throughout summer in this
pasture.

The proposed railroad also cuts off the
only water supply in this pasture.

The water is a spring fed pond at the
mouth of Harris Creek, SW 1/4 of SW 1/4 sec.
23 T 7 S, R 41 E.

To mitigate this loss of water I
request a well to be drilled in the
SE 1/4 of SW 1/4 sec 23, T 7 S, R 41 E and
of course south of the proposed Right
of Way (ROW).

I am also requesting an underpass for
the purpose of moving cattle through, for
fire control, and for the maintenance of
this new well be located SE 1/4 of SW 1/4
sec 23, T 7 S, R 41 E., and that the
size of this underpass be no less than
20 feet wide by 17 feet high.

I request an additional underpass in
the NW 1/4 of SE 1/4 sec 23, T 7 S, R 41 E,
where the proposed ROW blocks our maintain
road for this pasture as well as the
adjoining pasture to the east sec 2-
7 S, R 41 E the size to be no less

than 20 feet wide and 17 feet high.

I foresee a major problem with
fires and the control of them, where
the proposed ROW crosses our land.

In summer the wind blows from
West to East. Sparks and engine
exhaust blowing down wind will fall
onto our tall and dry grass which we
are trying to save for spring.

We may have to rethink our entire
operation in order to solve this
problem of potentially lost grass.

What does the TRRC (Tongue River Railroad
Company) plan to do in the event of a
fire?

How does the TRRC plan on compen
sating the landowner for loss of
grass, cows, fences, and water facilities
by train-caused fires?

Who will the landowner contact for
compensation, and how long will it take
for TRRC to pay the landowner for
the loss?

I request an overpass in the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ sec 23, T7S, R41E, in order for me to run our existing pipeline over the ROW to service our pasture in sec 24, T7S, R41E. In order to maintain this pipeline the over pass must be of necessary size and strength to allow backhoes to drive over it. I request the ROW fence be tight enough to hold baby calves.

I request a bridge be built over Harris Creek SW $\frac{1}{4}$ SW $\frac{1}{4}$ sec 23 T7S, R41E to protect this wetland and the wildlife it supports.

xvi Why isn't Harris Creek and the lower end of this creek SW $\frac{1}{4}$ of SW $\frac{1}{4}$ sec 23, T7S, R41E added onto the Impact Table as a number of perennial stream crossings? I assume the crossing mentioned is for Hanging Woman Creek, Harris Creek's lower end is a wetland and year around flowing stream, as well.

As a common carrier; will landowner be informed of what a train is carrying, the potential harmful effects of this load, and mitigation by the TRRC in the event of a derailment or leak?

2-7 This 1st paragraph states that the wildlife from Birney to Decker has not been formally surveyed for wildlife. Our ranch lies in this area. Deer are our biggest problem as far as fence repairs go. This proposed ROW will mean 2 more fences for the deer to cross and thus repairs will have to cost more. Will the TRRC pay a fair price for killed livestock in the ROW due to unmaintained fence?

5. The following are questions and comments by William P Carrel on the Draft EIS Finance Docket NO. 30186 (sub-No. 2) Tongue River Railroad Extension.

Executive Summary page

xi Why weren't Jack S. and Nancy W. Carrel* formally informed by the ICC of scope meetings held in Dec. 1989? Landowners along the proposed route in Sec 23 T7S, R41, E Rosebud County And furthermore did not receive any mailings by the ICC or TRRC in regard to this proposed extension?

xiv Why aren't Pipelines or maintenance roads mentioned as Existing Improvements Affected, on the impact Table? (also table on page 3-12)

7. Will the TRRC pay for or do repair on these fences?

How will the loss of deer and elk be compensated for, due to trains running over them in the ROW? Who will clean up the carcasses which cause additional flies and disease, along the ROW or in the fence?

Who will landowners contact in order to mitigate the aforementioned problems?

Why wasn't the wildlife studied in this area, since impacts will be major? What effects will the proposed railroad, the construction of the railroad, and the constant noise and vibration have on nesting Canada geese, Mallard + Wooduck, blue heron, teal, and bald eagles?

2-26 We have good clean air here on our ranch at the present time. What effects to grass, water, and air will construction and operations have? How will the Construction Contractors or TRRC suppress dust along the ROW and along existing roads?

6.
2-28 What will happen to the homestead building located in the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of sec 23 T7S R41E? The proposed railroad crosses over this building. Our house is over 100 years old. It is built of hand hewn logs and is chinked. It sets on a foundation of large native stone, and I am concerned for its well being. The constant vibration and noise by passing trains will shake the old house. What is TRRC's mitigation plan for old structures and the maintenance of them due to train traffic?

3-2 During a final engineering survey, could the proposed ROW or alignment move and will new impacts be studied?

3-8 Last paragraph states no caboose. How will TRRC know whether a fire was started along the ROW, without a caboose?

10
3,4-62 As we live approximately 12 miles below the high risk Tongue River Dam we are very concerned about effects of trains on this structure. How does TRRC really know what effects it will have? Will further studies be done prior to a decision?

6-2 The Multi-agency/Railroad Task Force as discussed on this page and pages A-15, A-16 is made up of 5 government agencies as well as TRRC. The 5 government agencies are budgeted through tax payer dollars. I don't think the tax payers should be the ones who pay for TRRC's mitigation plan for wildlife. Would the TRRC pay these agencies to oversee and help mitigate wildlife impacts? Why wasn't the land owner included in the task force?

9
Where would construction centers be located?

We request these not be on our land where would double or passing track be located?

Where would additional roads to the ROW be located?

4-5 We would not sell a strip of land through the middle of our ranch for this price of \$162.00 per acre. Even if it were to be used agriculturally it does not make sense. Is the TRRC going to plant corn on this land? I think not. Growing weeds would be the crop of TRRC's ROW.

4-6 Where would borrow sites be located?

4-7 I request that the ballast used for this proposed railroad be of sterilized gravel.

4-4 Where are the ROW agents on this chart? How many would there be? Where would they be located?

11
A-1 Who will oversee TRRC's mitigation plan and see that it is fully carried out? All mitigation practices are post decision. Is this a normal procedure?

A-2 Displacement of Capital improvements should include pipelines, roads and trails bisected or covered by the proposed railroad.

A-3 (v) I request cattle guards be placed in the track between landowners.

A-3 (vi) The additional people during construction will need law enforcement. Will the TRRC pay for additional law enforcement during construction?

A-11 What are the state-of-the-art techniques for fire prevention and suppression TRRC states on this page? The terrain is not flat. Where will these fire crews come from and will they have enough man power, equipment and time to respond directly?

12

A-23 I request that Certified Weed-Free Seed be used in reclamation and Certified weed free mulch as well.

A-24 Weed control must be taken seriously. A detailed plan by TRRC, approved by the Montana Weed Board, should be included in Mitigation plans prior to any permit. I am requesting TRRC's weed control plan be thorough and approved by the Weed Board. What is TRRC's plan to mitigate additional weed infestations on private land caused by the construction and operation of the proposed line

13

Much has been overlooked in this Draft EIS and Mitigation plan. As I write this all I can hear is the river. A certain peace has invited many people to enjoy this valley. I love living here, I have been all over the U.S.A and turned down many a much higher-paying jobs to live and work here. I know of at least 4 large petrified tree stumps over 4 feet in diameter that this ROW would destroy. Consider this valley as an endangered species, quiet, spectacular productive of an important food source and historical as well.

Sincerely
William P. Carrel
William P. Carrel

I RUN A 9700 ACRE RANCH LOCATED 18 MILES FROM MILES CITY, APPROXIMATELY 5 MILES SW OF THE JUNCTIONS OF HIGHWAYS 59 AND 332. I AM ON THE ORIGINAL 89 MILES WHICH HAS BEEN APPROVED BUT NEVER BUILT.

THE RAILROAD WOULD CROSS MY PROPERTY ON T5N, R47E IN SECTIONS 26, 23, 14, 13 AND 12. I RUN A COW-CALF OPERATION AND HAVE IRRIGATED ALFALFA GRASS FOR FEED FOR THE CATTLE. I PURCHASED THE RANCH IN FEBRUARY OF 1991 AND RECEIVED POSSESSION IN OCTOBER OF 1991.

THE PROPOSED ROUTE THROUGH SECTION 26 WOULD CUT OFF THE PATH FOR MY CATTLE TO GET TO THE RIVER AND AN ARTESIAN WELL FOR WATER. I USE THIS PASTURE IN THE WINTER AND THE ARTESIAN WELL IS VERY IMPORTANT TO PROVIDE WATER FOR THE CATTLE. IT PREVENTS THE CATTLE FROM GETTING ON THE ICE IN THE WINTER AND POSSIBLY FALLING INTO THE CRYSTAL RIVER WATER. THE ROUTE THAT I KNOW ABOUT FROM AN INDIAN SCARLE MAP WOULD LEAVE THE ARTESIAN WELL INTACT AND VIABLE BUT I UNDERSTAND FROM A NEIGHBOR THAT THE MAP MAY NOT REPRESENT A ROUTE THAT HE HAD SEEN

WHICH PASSED NEXT TO OR OVER THE ARTESIAN WELL. TRR HAS NOT CONTACTED ME AND I DO NOT KNOW WHETHER I HAVE DECENT MAPS OF THE TENTATIVE ROUTE. IF THE ROUTE DOES GO OVER THE ARTESIAN WELL I FEEL THAT TRR SHOULD PAY FOR REPLACEMENT OF THAT WELL. IN EITHER ROUTE I WOULD NEED A PASS IN SECTION 26 THAT I COULD GO DOWN WITH MY VEHICLES AND THE CATTLE COULD PASS THROUGH TO GAIN ACCESS TO THE RIVER AND THE WELL. I WOULD ALSO NEED A CATTLE-VEHICLE PASS IN SECTION 26 FOR VEHICLE AND CATTLE ACCESS FROM THE NORTHEAST. I SUB LEASE A SMALL PARCEL FROM ALFRED LEATHERBERRY WHO LEASES FROM CLARE AND THE PASS MAY NEED TO BE ON THIS PROPERTY.

IN SECTION 23 THERE IS APPROXIMATELY 200 ACRES THAT I WOULD LIKE TO DEVELOP FOR IRRIGATION. THE PUMP SITE FOR THIS IRRIGATION WOULD BE IN SECTION 26 FROM SECTION 13 ON THE WEST SIDE OF THE RIVER PIKE (ITLY ACCESS FROM THE EXISTING PUMP SITE). I WOULD NEED TO RUN PIPE FROM THE RIVER TO THE WEST SIDE OF SECTION 23 AND THEN CARRY THE WATER IN A

DITCH AND RELEASE IT AND LET IT GO EAST BACK TOWARD THE RIVER. THIS WOULD REQUIRE 1 OR 2 CULVERTS TO PASS PIPE THROUGH THE RAILROAD GRADE. THE CULVERT WOULD HAVE TO BE LARGE ENOUGH TO WALK THROUGH BECAUSE A PIPE JOINT WOULD NEED TO BE MADE UNDER THE GRADE. THE RAILROAD GRADE WOULD PREVENT THE WATER FROM RETURNING TO THE RIVER. I WOULD NEED ABOUT 14 CULVERTS IN THIS AREA TO ALLOW THE WATER TO PASS THROUGH THE GRADE. THIS IS ALSO PART OF MY WINTER PASTURE AND CATTLE WOULD NEED ACCESS TO A STRIP LEFT ALONG THE EAST EDGE OF SECTION 23. 3 CATTLE-VEHICLE ACCESS POINT SHOULD BE SUFFICIENT ALONG THIS ROUTE. ALL OF THE CATTLE VEHICLE PASSES SHOULD BE AT GRADE SO THAT WATER WOULDN'T SETTLE INTO A HOLE AND FREEZE OR MAKE A BUG HOLE AND THEREBY BE IMPASSABLE. THIS WOULD PROBABLY REQUIRE ABOUT 12-13 FEET OF CLEARANCE TO ALLOW MY TRACTOR AND LOADER TO GET THROUGH. THEY WOULD ALSO HAVE TO BE WIDE ENOUGH TO ALLOW FARM EQUIPMENT TO PASS THROUGH TO FARM THE CROP ON THE EAST SIDE OF THE TRACK. THE NEIGHBOR IN

SECTION 24 MAY ALSO NEED TO USE THESE ACCESS POINTS WHEN THE RIVER IS UP. HE CURRENTLY FORDS THE RIVER IN SECTION 24 TO GAIN ACCESS TO HIS LAND WEST OF THE RIVER. I HAVE A PRIVATE BRIDGE WHICH IS IN SECTION 13 WHICH THIS NEIGHBOR HAS ACCESS TO USE WHEN THE RIVER IS UP AND HE CANNOT FORD THE RIVER. IF UNDERPASSES CANNOT BE BUILT THERE SHOULD BE AT LEAST 2 PASSES OVER THE TRACK FOR FARM EQUIPMENT PASSAGE IN SECTION 26.

IN SECTION 14 THERE SHOULD BE AN ADDITIONAL FARM EQUIPMENT, VEHICLE, CATTLE PASS AS THE RAILROAD CROSSES MY ROAD IN THIS AREA. I ASSUME THAT A BRIDGE WILL BE BUILT IN SECTION 14 WHERE THE RAILROAD CROSSES CIRCLE CREEK TO ALLOW WATER TO PASS TO THE RIVER. THE PASS IN SECTION 14 IS VERY CRITICAL AND NEEDS TO BE THERE TO ALLOW ACCESS TO THE BALANCE OF MY RANCH IN SECTIONS 23, 22, 15, 16, 17, 18, 7, 8, 9, 5, AND 4. MOST OF MY RANCH LIES WEST OF THE RIVER AND ONLY 200-300 ACRES LIE EAST OF THE RIVER.

SINCE THE TRACK IS PLANNED ALONG THE WEST SIDE OF THE RIVER I HAVE TO CROSS THE TRACK TO GET TO MOST OF MY PROPERTY. I WOULD LIKE TO SEE CATTLE GUARDS ON THE TRACK TO PREVENT THE CATTLE WHICH GET ON THE TRACK FROM GOING ON TO THE NEIGHBORS IN SECTION 26. I WOULD ALSO LIKE TO SEE CATTLE GUARDS AT ALL CROSSING POINTS ALONG THE ROUTE OF THE RAILROAD. THIS WOULD BE A TOTAL OF 7 CATTLE GUARDS ON MY PROPERTY.

THE CALVING PASTURE IN SECTION 13 WOULD NEED A CATTLE-VEHICLE PASS TO ALLOW ACCESS TO AN ISOLATED CORNER OF THE PASTURE IN SECTION 14 AND ANOTHER ISOLATED PART IN SECTION 13 THIS PART OF THE PASTURE IS ISOLATED DUE TO THE TRACK GOING ALONGSIDE A LARGE GUMBO BUTTE PROHIBITING CATTLE TRAFFIC TO IT. THE PROPOSED ROUTING OF THE TRACK IS ALONG THE BUTTE AND WOULD SEVER THE MIGRATION OF THE CATTLE TO THIS AREA. THE GUMBO BUTTE IS OVER 200 FEET ABOVE THE PROPOSED RAILROAD ROUTE. IN THE EASTERN PORTION OF SECTION 13 I NEED 2 CATTLE-VEHICLE PASSES, ONE TO ALLOW ACCESS TO THE BALANCE OF MY PROPERTY IN SECTIONS 11, 12 AND 14.

THIS PASS WOULD ALSO BE USED FOR FARM EQUIPMENT FOR POTENTIAL DRYLAND FARMING IN SECTION 12 THAT WAS FARMED IN THE PAST. THE OTHER PASS IS TO ALLOW CATTLE EASIER ACCESS TO THE RIVER FOR WATER AND VEHICLE ACCESS FOR POSSIBLE FIRES. THERE IS A WELL IN SECTION 13 WHICH IT APPEARS THAT THE RAILROAD WOULD GO OVER THE TOP OF. I WOULD ALSO LIKE TO SEE THIS WELL REPLACED. THERE SHOULD ALSO BE AN ADDITIONAL CATTLE-VEHICLE PASS IN THE WESTERN CENTRAL AREA OF SECTION 13 TO ALLOW WATER DRAINAGE AND EASIER CATTLE ACCESS TO WATER. THERE SHOULD ALSO BE 10-20 CULVERTS IN THIS AREA AS THE WATER RUNOFF FROM THE GUMBO BUTTE IS HEAVY AND ACCUMULATES ON THIS FLAT. THE RAILROAD GRADE WOULD PREVENT THE WATER FROM REACHING THE RIVER AND WATERING THIS FLAT. OUR HOUSE, TRAILS, AND BUILDINGS ARE WITHIN 1/4 MILE OF THE RAILROAD ON THE EAST SIDE OF THE RIVER IN SECTION 13. I AM CONCERNED ABOUT VIBRATION AND SETTLING PROBLEMS OF MY BUILDINGS.

IN SECTION 12 I NEED 3 CATTLE VEHICLE CROSSINGS FOR ACCESS TO THE RIVER FOR CATTLE WATER AND ACCESS FOR FENCING FENCE AND FIRE CONTROL IN SECTION 12. THE NEIGHBORS IN SECTION 7 ALSO USE OUR BRIDGE TO GET ANIMALS AND FARM MACHINERY TO SECTION 7 WHEN THE RIVER IS UP. THEY HAVE SOME LEVELLED IRRIGATED GROUND IN SECTION

I AM CONCERNED ABOUT DUST SUPPRESSION DURING CONSTRUCTION. WILL WE BE PAID FOR WATER USED FOR DUST SUPPRESSION? WE SHOULD BE PAID FOR ANY OF OUR IRRIGATION WATER USED FOR DUST SUPPRESSION. I AM ALSO CONCERNED BECAUSE THE RIVER MAY BE LOW DURING THIS CONSTRUCTION TIME OF THE RAILROAD BECAUSE THE REBUILDING OF THE DAM IS SCHEDULED FOR APPROXIMATELY THE SAME TIME AS THE RAILROAD. I UNDERSTAND THE WATER MAY BE HELD BACK OR RELEASED SO THAT DAM CONSTRUCTION CAN BE DONE. IF THE WATER IS LOW AND REJECTED FARTHER BY DUST SUPPRESSION WE NEED TO BE COMPENSATED BUT MAY IF THERE ISN'T ENOUGH WATER TO PUT UP OUR CROPS ON OUR IRRIGATED WATERSOUND.

I AM ALSO CONCERNED ABOUT FIRE SUPPRESSION. I HAVE A PRIVATE BRIDGE

ACROSS THE RIVER AND THE FIRE TANKS COULD CROSS IT TO GAIN ACCESS TO LAND WEST OF THE RIVER THAT BELONGS TO BURN. ~~THE ALSO UNDERSTAND~~ THE PROBLEM IS THAT THE NEXT BRIDGE ACROSS THE RIVER IS 12 MILES TOWARD ASHLAND FROM US. IF A FIRE STARTS ON OUR NEIGHBORS LAND THE FIRE TANKS WOULD NEED TO CROSS OUR BRIDGE AND THEN CROSS ALL OF OUR RANCH TO GET TO IT. I FEEL THAT THERE SHOULD BE ADDITIONAL BRIDGES BUILT TO ALLOW EASIER AND QUICKER ACCESS TO POSSIBLE FIRES. I FEEL THE COST OF THESE BRIDGES SHOULD BE PAID FOR BY TRR. THERE IS ALSO ONLY ONE OTHER BRIDGE THAT I KNOW OF BETWEEN HERE AND MILLS CITY AND THERE SHOULD BE MORE. I ALSO UNDERSTAND THAT NO CATTLE IS PLANNED FOR THIS ROUTE. THAT WOULD ALLOW FIRES TO BE LOCATED AND PREVENTED TO LONG BEFORE THEY ARE NOTICED.

I WOULD LIKE TO REQUEST THAT NO WORK CAMPS BE PROPOSED ON MY PROPERTY.

THE CULVERTS DESCRIBED IN THE E.I.S ARE INADEQUATE FOR CATTLE CROSSING AND WE WOULD NEED A BRIDGE-LIKE STRUCTURE THAT CATTLE COULD

GO THROUGH.

THERE IS ABUNDANT WILDLIFE ALONG THE RIVER AND I HATE TO SEE IT DISTURBED BY THE RAILROAD. WHITETAIL DEER, MULL OZER, WILDTURNETS, FALLOWS, EAGLES, HAWKS, OWLS, CRANES AND OTHER WILD ANIMALS ARE PRESENTIAL.

I AM CONCERNED ABOUT WEEDS BEING BROUGHT IN AND WOULD LIKE TO SEE THE WEEDS CONTROLLED BY THE RAILROAD

I WOULD LIKE THE LAND TO REVERT BACK TO ME AT THE END OF THE LIFE OF THE RAILROAD AND WOULD PREFER TO LEASE THE RIGHT OF WAY VERSUS HAVING IT OWNED BY THE RAILROAD. I WOULD PREFER SOMETHING LIKE A TEN-MILE LEASE SIMILAR TO THAT BEING PROPOSED BY THE LAND OWNERS ON THE EXISTING BURLINGTON NORTHERN TRACK. I UNDERSTAND THIS LEASE ARRANGEMENT IS TO START IN 1995. MY MORTGAGE REQUIRES THAT MONEY RECEIVED FROM THE LAND GOES AGAINST THE PRINCIPAL. ALTHOUGH THIS IS BENEFICIAL TO ME IT WOULD LIMIT MY USE OF THE MONEY FOR EXPENSES AND COULD POSSIBLY INCREASE MY TAX BRACKET.

I WOULD ALSO LIKE TO SEE AN ESCROW ACCOUNT SET-UP SO THAT WE AS LAND OWNERS COULD DRAW MONEY FROM IT AND SPAY WEEDS, REPAIR FENCE

REPAIR OR REPLACE DAMAGED WELLS, BUY MAY ETC. FOR PROBLEMS CAUSED BY THE RAILROAD. THIS WAY EACH ITEM WOULD NOT HAVE TO BE NEGOTIATED THROUGH A COURT CASE TO GET COMPENSATION. THE ESCROW ACCOUNT WOULD BE KEPT UP TO LEVEL BY TRR.

I WOULD LIKE TO SEE A WOVEN WIRE OR 6 WIRE FENCE ALONG THE RIGHT OF WAY ACROSS MY LAND.

IF TRR NEEDS TO USE MY PRIVATE BRIDGE I WOULD LIKE TO BE PAID FOR THIS USE AND FOR REPAIRS. I WOULD ALSO LIKE TO LIMIT THE LOADS TAKEN ACROSS.

I PERSONALLY WOULD PREFER THAT THE RAILROAD NOT BE BUILT BECAUSE OF ALL THE PROBLEMS IT WOULD CAUSE TO MY OPERATION.

BECAUSE THIS TRACK GOES THROUGH MY CALVING PASTURE I AM AFRAID THAT CALVES MAY BE KILLED BECAUSE THEY ARE VERY HARD TO KEEP IN. IF CALVES OR ANY ANIMALS ARE KILLED I WOULD WANT TO BE PAID ON A POTENTIAL OF WHAT THE ANIMALS COULD BRING NOT CURRENT MARKET VALUE. FOR INSTANCE WE SELL THE CALVES IN THE FALL FOR 400-500 AND AS YEARLING CALVES THEY WOULD BRING 2000

I AM ALSO CONCERNED ABOUT THE PROPOSED CREATING INWOODS WHICH COULD LIMIT OR STOP ME FROM FEEDING MY CATTLE IN THE WINTER.

I AM ALSO CONCERNED ABOUT THE SCHOOLS BECOMING OVERCROWDED WITH CONSTRUCTION CREW AND PERMANENTLY RELOCATED PEOPLE BEING TRANSFERRED TO MILES CITY. WE ARE OUT OF THE MILES CITY SCHOOL DISTRICT AND OUR CHILDREN WILL BE THE ONES ASKED TO RELOCATE OR BE LEFT VIOLAT OVERCROWDED. POSSIBLY THE ETCROW ACCOUNT I SPEAK OF EARLIER COULD BE USED TO TAKE OUR CHILDREN TO A PRIVATE SCHOOL WOULD THE SCHOOL SITUATION GET OUT OF HAND.

I WOULD ALSO LIKE TO HAVE THE RECLAIM THE GRASSLAND DISTURBED AT THE END OF ITS LIFE.

SINCERELY,
MARK FOX
-Mark Fox

Dear Mark Fox

We are once again reviewing all requests and most especially are responding to the 11th in the following comments and questions.

1. We are not aware available that there is a large land disturbance but do own approximately 5 miles of land in the Ferns River Valley in which one proposed rail line will run. We also own approximately 7 miles of land in the proposed rail line route. Areas of where proposed land will be detrimental to our operation. We are in the center of either of these proposed routes, which is not ideal. We will have to relocate our home, many other ranch buildings, barns, corrals, etc. The cost of this move would be tremendous. Any questions to whom we

1. Who is going to be responsible for moving and relocating all of these homes, barns, corrals, etc?

2. Who will be responsible for locating good water sources and putting in new wells?

3. Who will be responsible for putting in new access roads and relocated ranch buildings?

Any other location would not be so air taking as we have the Ferns River Valley and it is the most suitable place for a residential and ranch operation.

We are also very concerned about impacts to our land when all:

1. Having the area that would be our own coming to be treated for the same? How many times of our waterland will be removed from these camps?

2. Having the area to be cleared all by one

collaboration could be discussed further and we instead of doing your work could have a company 3. We are not aware available that there is a large land disturbance but do own approximately 5 miles of land in the Ferns River Valley in which one proposed rail line will run. We also own approximately 7 miles of land in the proposed rail line route. Areas of where proposed land will be detrimental to our operation. We are in the center of either of these proposed routes, which is not ideal. We will have to relocate our home, many other ranch buildings, barns, corrals, etc. The cost of this move would be tremendous. Any questions to whom we

We are concerned about alternative routes as we have never been provided with a good map for the already proposed routes. We find the proposed routes are going to have a major impact on the fish, wildlife and livestock in the area. If the rail line is to go through our area we have to relocate. We are also going to relocate the deer, turkeys and some other mammals every morning and evening. Are they also going to relocate the bull calves and cows that we are able to keep on our backyard every day? If we find to relocate, are they going to put a fence in our new backyard around both fish ducks and geese? We find the only alternative is to keep using the existing rail lines that are already established.

We feel rail line and right of way will separate good stock, water water and also disrupt the established streams that we have put in place to provide both of our property and provide a problem for the existing wildlife. We have to move goods to some extent. Is the TRRC allowed to put in our new streams and...

all of the questions that will be coming?

The railroad is a great concern of our's because there is so much country inaccessibly with truck traffic. Much of it is now crowded with established and watered about the proposed line having a fine shaped canal by our own and having equipment that we have had in there will be a great job because due to the grade of the rail lines to which proposed route. It would be nearly impossible without big crews and equipment to get these jobs under control. Is the TRRC willing to provide these firefighting crews and equipment? How would we be compensated for loss of timber?

We would like to stress again our lack of an adequate map to be able to list any underpastes or underpastes we would need for equipment. Is the TRRC going to guarantee we will get all of the underpastes, underpastes that will be necessary to keep our operation functional? How to operations of other landowners who have had rail lines put through their property and have not had their needs met, we have to wonder you will.

We have established ourselves systems for operation of our home that they rail line would disturb. How long of they land would be lost to the rail line through our water in the TRRC going to provide us with their services and find for our livestock to ensure the continuation of our operation?

We also have us, given concerns about the drainage problems that would be under the rail line and

right of way. It is also true that it is essential to adequately and suitably mark the boundaries of the property.

We can't quite sure the noise pollution will greatly affect our normal way of life here in the valley, not to mention the vibration coming to the building structures. There will also be much air pollution spread through this area not to mention the dust & various pollution which is very much a problem to the health and well being of all people, livestock & wildlife & also the environment. We would like to stress again the need of relocation of this road line is justified. Air pollution problems would be a health problem to our livestock which we are raising for consumer consumption. How is the TRAC going to prevent these pollution problems? Who is going to come through and clean up when the road crew leave and is it going to be satisfactory?

Construction like this comes through an area. There is also a right of way problem. Is the TRAC going to provide proper weed control and for fire control?

Are suitable fencing requirements going to be met and who is going to maintain these fences?

Is the TRAC going to provide equipment for potential snowblowers due to their having to divert our roads? Or are we going to be provided with good & compact roads? Is the TRAC to park a line or show road to relocate our livestock?

Can you provide us to maintain access to electricity and telephone service?

Is the TRAC representative of the TRAC so far that it will be working with the TRAC and all would have to endure?

We are all going to get paid for putting up with it? That seems up & down down the road?

We just saw sad that this proposal was sure been considered at all because it will ruin our more beautiful view in this world. We know there are getting to be fewer places like this all of the time due to bad decisions and the greed of others.

Yours Truly,

Don Hester Sr.
Fidelity & Carlson



BONES BROTHERS RANCH

BIENEY, MONTANA 59011

Alpaca and Rabbit Breeding, Sheridan, Wyoming, and Forest, Montana
Telephone and Express Address: Sheridan, Wyoming
Farming and stock raising



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railroad through our pastures? Will our soil and water quality be protected? Who will monitor this and who will have the power to enforce it?

INDIRECT IMPACTS:

SAFETY: Are there any emergency medical or firefighting facilities within 30 minutes of Bieney? Any accident or fire caused by the proposed railway could have such more serious consequences in this area than in a less remote place. The potential impacts on the safety of the people of the area are magnified by our remoteness. Will the final E.I.S. take this into account?

Another safety issue which is not dealt with involves the residents of Bieney. At present parents have little track of their whereabouts. However, if this railroad is built the parents and teachers of Bieney will have to be constantly vigilant to avoid children straying onto the line and being hit by trains. No doubt there are mitigation measures which could be taken but they are not considered in the D.E.I.S. and would be unlikely to allay the fears of the residents of Bieney. What mitigation measures are proposed to deal with this?

WILDLIFE: the effects on wildlife discussed in the D.E.I.S. are largely speculation since over two-thirds of the area concerned has not been surveyed. How can adequate conclusions be drawn from such hopelessly inadequate information?

One aspect that is greatly underemphasized is the number of animals that would likely be killed by trains. According to BM operators their trains kill an "unbelievable" amount of wildlife, including deer, antelope, coyotes, foxes, and countless smaller animals. Many of these animals get trapped between the fences or snow drifts and wander along the ROW until they finally get hit by a train. The D.E.I.S. only mentions the "unavoidable impact of train-deer collisions" (page 5-4). How many animals of what species will be killed on this line every year?

Regarding the statement that "the ROW could act as a barrier to the natural movement and migration of animals"

(page 4-62) this is surely a certainty not just a possibility. The only mitigation measure suggested is that construction be minimized at big game wintering sites from December through March (page A-21). Is this considered sufficient? By whom? What other mitigation measures are possible?

WETLANDS: the D.E.I.S. claims that "wetlands drained or filled by railroad construction would be replaced somewhere within the same general vicinity". How does a railroad company propose to "replace" the delicate and intricate ecology that exists in these wetlands? No doubt they can make some new wet land but this does not produce a wetland. This seems typical of the exploitive arrogance of these "developers".

SOCIO-ECONOMIC: in section 5.2 the D.E.I.S. only discusses briefly the "unavoidable socio-economic impacts that are attributed to the operation of the railroad". It ignores the massive socio-economic impacts during the construction period. For example, the village of Bieney has approximately 25 residents. The TRAC plans to build a construction center in the immediate vicinity to house 15% of its non-local workforce. This could amount to 65 workers and their families living in close proximity to the village. Yet the obviously significant socio-economic impacts are not even mentioned. What will these impacts be and how will they be minimized?



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MITIGATION: the mitigation measures proposed in the D.E.I.S. are ineffectually inadequate. There are long lists of studies that will be done if the extension is permitted and after final engineering is completed. This is absurd. Most of these studies should have been done before this draft E.I.S. was written. There are a great many vague promises made by TRRC as to the mitigation measures they might undertake. Most of these allow for TRRC to draw up its own mitigation plans and then choose to implement only those measures it feels are "reasonable and practical". Nowhere is there any indication of who will be responsible for keeping TRRC to its promises and enforcing thorough mitigation measures: probably because there are no specific promises made or mitigation measures proposed. Is TRRC not required to complete detailed studies and engineering before an E.I.S. is written? If not how can a true statement of environmental impact be made?

The only suggestion made to ensure adequate mitigation is the formation of "an informal Multi-agency/Railroad Task Force". By its very nature this body would have no power to enforce anything. So TRRC is left to conduct various studies if it wants to and to choose what measures it feels like implementing to mitigate the devastating effects of its railroad. It is even suggested that "at their own expense" the "Task Force members" may use additional resources available to them to accomplish the mitigation projects. Should it not be up to TRRC to "accomplish the mitigation projects" or at least to pay someone else to do it? The implication is that the Task Force has been proposed by TRRC as a way of avoiding its responsibilities.

There is not one definite, specific mitigation measure outlined in appendix A of the D.E.I.S. Instead it uses language such as "procedures to be followed during construction would be developed in the form of guidelines that are based on the tasks to be accomplished" and "to the extent practicable, TRRC would schedule all major noise producing activities during construction to occur during the weekday and daylight hours". In short, they promise nothing. Regarding emergency response, fire prevention, toxic spills, aquatic and terrastrial ecology, wildlife, and vegetation TRRC promises to conduct studies and draw up detailed plans. They also list specific measures which "may"



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be included in these plans. If these plans were carefully drawn up and conscientiously adhered to they would no doubt mitigate many of the impacts of this railroad. However, who is going to ensure that this is done? Who will oversee the studies to ensure they are adequate? Who will decide if the plans drawn up are sufficient? Who will supervise their implementation? Who will ensure that these studies adhere to existing environmental laws? What action will be taken and by whom if TRRC fall short of their obligations? In short, who will TRRC be accountable to and what power will they have to enforce their authority? These questions are very important because we do not believe that TRRC can be trusted to adequately mitigate the effects of this railroad if they are not forced to.

SPECIFICS:
Land Use- TRRC proposes direct compensation for loss of land, presumably in the form of a lump sum payment on a per acre basis. If possible we will not sell the land to TRRC. If we have to we will lease it to them for the life of the line but it must revert to us when that is over. Can we insist on this?

- TRRC proposes to negotiate various other mitigation measures with individual landowners. However, to ensure that these measures are carried out satisfactorily and that they are maintained for the life of the line, we would like to see a fund established with TRRC money which could be accessed by all affected landowners. In the event that mitigation measures proved inadequate, or losses due to fire, dust or accident the affected landowners could withdraw from this fund as compensation. TRRC would be required to maintain the level of the fund at all times. Can TRRC be required to establish such a fund?

- In addition we would like to see a bond paid by TRRC to cover the cost of removing fences and repairing the land after the railroad closes. Can such a bond be required? - TRRC proposes to appoint a railroad representative with "direct" access to the "management" to work with contractors and landowners to resolve any problems that develop during construction. Will this person be available and contactable at all times? What authority will they have to make decisions? How will problems be resolved after construction is completed?



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Recreation- there is no suggestion that TRRC mitigate the effects of noise, vibration, and the ugliness of the railroad to the recreational users of the area either by trying to reduce these impacts or by providing improved recreational facilities. Will such measures be required?

Noise- there is no suggestion that TRRC mitigate the effects of noise and vibration during the operation of the line either through construction techniques, planting, speed limits, timetabling, rerouting of the line, or compensation to affected people. Have such measures been considered? Will they be considered? If so how would they be enforced? What action would be taken if noise impacts exceed agreed or allowable levels? Who will set these levels and who will enforce them?

Fire- does TRRC undertake to actually provide any fire-fighting equipment? Will cabooses be considered as a fire mitigation measure? If not why not? Will compensation be available to landowners in the event of train started fires and how can this be proved? Who will decide if proposed fire mitigation plans are adequate and who will enforce them?

Toxic Spills- how does TRRC propose to "immediately contain any spill"? Who will monitor TRRC's safety procedures? What measures can be taken if TRRC does not keep its promises or if a spill occurs? Will they simply be fined a pittance?

Wildlife- Should not the studies proposed have been done before the draft E.I.S. was even written?
- Is a one month long ground reconnaissance considered adequate?
- The only actual measure proposed to mitigate the effects to wildlife is a "reasonable attempt" at timing of construction. Is this considered sufficient? By whom?
- Who will enforce the mitigation measures proposed and how?

Weeds- will the spray program be conducted every year for the life of the railroad?



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highly-erect. The TRRC proposed tunnel, which is on our land, Section 20, T-12, R-41E, is to be located through a ridge. This appears to be the same strata as the ridge where the old tunnel coal mines are. In the early 1960s-1970s, the TRRC tunnel maps had an area of 100 acres and 100 feet wide. A structural sounding can be built on this site. The ridge was dropped because of a 100-foot wide of underlying coal. Has TRRC considered those drilling results? How extensively has the TRRC researched the area geologically? The TRRC has not sought our permission to drill and intent to do any geological drilling. Has the TRRC done any drilling without our permission? We know of a foundation would this suggested to be for a proposed tunnel? If the tunnel were built and the ground gave way under it, what is the likelihood of a Carabment on either the bridges #106E and #107E which are on either side of it? Or if they ascend the tunnel, how large and deep a cut would have to be made to remove this soil for preparation of a road bed? What would all of this soil construction do to the water quality of the Tongue River? This area is a prime habitat for the fish in both sides of the proposed tunnel. As explained in the 1992 Draft EIS p. 4-10-10. There is no flat ground on the tunnel side of these bridges, which is terrain being equipment to build bridge pilings. Just how does the TRRC propose to engineer this tunnel without the land area on which to work? Will the TRRC be working in the bed of the Tongue River? If so, who will give them permission to do that, and what impact would being in the River have on water quality and stream flow?

During the construction phase of the proposed extension, we also wonder where the water will be obtained for the compacting of the railroad bed? There is no additional water for sale from the Tongue River Reservoir. The water that is owned by downstream ranchers is designated for irrigation purposes only. Will an exception be made so that TRRC can buy rancher's water and use it for railroad construction? Does the TRRC realize that if the construction phases of the railroad and the spillway enhancement coincide, there won't be any water available for either irrigation or railroad construction? Where will the construction camps be located? Can we as landowners refuse to allow a camp on our property? What rights do we landowners have concerning trespassing of TRRC employees? Will we have to hire a lawyer at our expense to protect what should be guaranteed to us as citizens of the United States?

From a rancher's point of view, for the proposed extension in the fall

of 1989, we decided that we would not live with the railroad coming through our property and soon after we listed our ranch for sale with a real estate firm. During the two years we had the ranch listed, we had many serious inquiries and many people and agencies called. Many of them called the county, but our ranch was not listed. The reason is and because state agents have stated and testified to us that there is the Tongue River Railroad, and one of them used to have a railroad operating there and running, their first claim is certainly not true.

We want to weigh the balance between the destruction of one of the last wild areas left in the United States and the people who will be in the economic profit of big business. After all, there is already an established railroad effectively moving the cost to meet national needs.

Sincerely,
William R. Musgrave
 William R. Musgrave
Judith Ann Musgrave
 Judith Ann Musgrave
Kyle Ann Compton
 Kyle Ann Compton

Section of Energy and Environment, Room 3214
 Interstate Commerce Commission
 Washington, D.C. 20423

(Sub No. 2)

Sept. 11, 1992



BONES BROTHERS RANCH
 BIRNEY, MONTANA 59012
 Address and Railroad Between Sheridan, Wyoming, and Powell, Montana
 Telephone and Express Address: Sheridan, Wyoming
 Telephone Area 406-328-2222



To: Dana White
 Section of Energy and Environment, Room 3214
 Interstate Commerce Commission
 Washington, D.C. 20423
 RE: Finance Docket 30186 (Sub No. 2)

COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR TONGUE RIVER RAILROAD.

I am a landowner along the proposed extension of the Tongue River Railroad between Ashland and Decker, MT. My property is about three miles below the Tongue River Dam in the narrow part of the valley. I am submitting my comments in response to the draft Environmental Impact Statement.

My husband and I sold our ranch on the Tongue River to our son, Bill, in 1976. At that time we reserved 40 acres with the purpose being that we might want a cabin there sometime, but mostly for our other son, Ted, as well as his children. Ted, who was a chemistry teacher at the university level, loved to return to the Tongue River every chance he got. The 40 acres has a marvelous view and access to the main road, the PEA line and, of course, some of the river. This, to me, is a very special parcel of land.

In 1986 Ted started making plans to build a cabin. In February of 1987 my husband died. In November of 1987 Ted was diagnosed as having cancer and passed away on June 5, 1989. Before he died, he asked me to let him to rest on the Tongue River. He is there, on my 40 acres, with a nice marker.

This summer I decided to fulfill Ted's dream and build a cabin, which I knew I would enjoy and have for Ted's son and daughter to come and enjoy on their vacations. In September my son, Bill, and I went to Shepherd, MT, to the Permanent Log Homes, Inc. and talked to Jay Hansen about the cabin. He gave us the information I wanted and we decided to return home, draw plans and order the cabin kit in the spring of 1990.

Well, in December of 1989 I learned of the plans to build a railroad up the Tongue River. And would you believe, the plans for the proposed route go right through the middle of my 40 acres. I couldn't believe it! Needless to say I wrote the Log Home Co. and said I'd have to put the plans on hold. This has now been 2 1/2 years. I am 72 years old and don't have that much quality time left to enjoy a cabin. I feel I have been cheated out of 2 1/2 years already from doing something I really wanted.

In closing, I do not want a railroad on my land, and I sure don't want a railroad near my son's grave.

Sincerely,
Bernice Musgrave
 Bernice Musgrave
 2214 - Loucks
 Sheridan, WY 82801

Prepared by Andrew Norman Lewann
 Bones Brothers Ranch
 Birney, Montana, 59012
 On behalf of Bones Brothers Ranch Inc.
 Stockholders: Irving Hansen Alderson
 Natalie Moore Alderson
 Jean Catherine Alderson
 and Mary Roberts Alderson.





BONES BROTHERS RANCH

BIRNEY, MONTANA 1981

Approved and Ralified Statute Sheridan, Wyoming, and Fourth, Montana
Telephone and Zipcode Address Sheridan, Wyoming
Telephone Area 307-834-0000

COMMENTS ON THE DRAFT E.I.S. FOR THE TONGUE RIVER RAILROAD

Prepared by Andrew Norman Lemann on behalf of Bones Brothers Ranch Inc.

Bones Brothers Ranch is located immediately south of Birney with land on both sides of Hanging Woman Creek and on the East-Fork of Hanging Woman Creek. (Range 42 East, Township 6 South, Section 7) This ranch is a cow/calf operation. We raise and sell calves and 2y-o. spayed heifers, and we raise our own replacement heifers, without the use of implants. There are 10-12 people living at the ranch.

The proposed route of the T.R.R. will cut through the section of the ranch known to us as the "Bull Pasture", immediately adjoining the village of Birney. The effects of this, both direct and indirect on our lives and on our ranching operations, will be entirely detrimental. There is not a single benefit that can come to us from this railroad if it is built. This fact and the many detrimental effects it will have are not made clear in the Draft E.I.S. which states only that the concerns of the ranchers will be dealt with in separate negotiations with individual landowners. This is not a "statement of environmental impact" it is an avoidance of it. Why have the potential detrimental effects to the existing landowners not been made clear in the D.E.I.S. as an argument for the "No-action alternative"?

Is fact the no-action alternative is barely mentioned in the D.E.I.S. and is certainly not considered as a viable alternative. This is despite the fact that the public need is adequately served by existing rail facilities. Is the no-action option required to be realistically considered? If so why has this not been done in the D.E.I.S.?



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GENERAL COMMENTS ON THE D.E.I.S.

The D.E.I.S. states that landowners along the proposed route have been consulted as to the effects of the railroad on their operations. Nobody on this ranch has been consulted and we do not know of anybody who has. At a recent landowners meeting held at the Diamond-Cross Ranch I asked if anyone present had ever heard of a rancher being approached and not one of those present had. Which landowners were consulted, how, when, and by whom?

This raises serious questions about the methods used and the diligence with which information has been gathered for inclusion in the D.E.I.S.

These questions are most pertinent to the discussions on wildlife the D.E.I.S. repeatedly states that of the 41 miles of the proposed extension, 28 miles have not been surveyed for wildlife. This is more than 7/3 of the area covered by the D.E.I.S. about which nothing is known yet various assumptions are made. How, when, and by whom was the relevant information gathered? By whom was this process considered adequate to enable an accurate statement of environmental impact?

The maps provided in the D.E.I.S. are completely inadequate to enable us to comment fully on the effects of the proposed route. These maps obviously do not show a final, properly engineered route for the railroad. It seems likely, and is implied throughout the D.E.I.S. that the route could change dramatically according to the engineering logistics. The maps provided do not even show possible locations for the proposed sidings and construction camps which will both have huge negative impacts on the affected landowners. We feel that it is very difficult to make adequate comments on such inadequate information. Will correctly engineered and detailed maps of the route be made available to enable us to comment fully before the final E.I.S. is produced or any decision is made?



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BONES BROTHERS RANCH

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The D.E.I.S. does not appear to have considered enough alternatives to TRRC's preferred route. The no-build option is barely touched upon and there are no alternatives offered where the railroad severely affects sensitive areas. For example, the village of Birney. The map on page 9-4 shows the proposed route cutting sharply under a steep ridge immediately south-west of Birney and passing extremely close to the town itself. This would entail moving the road out onto the flood plain, moving the power lines, and the construction of two bridges, one over Hanging Woman Creek and one over Hanging Woman Creek Road. The effect on Birney would be devastating (noise, dust, social pressures due to a nearby construction camp, constant danger of children straying onto the ROW, and the squeezing of the town between the railroad and the river), as would the effect on Hanging Woman Creek and its fish spawning grounds. What are the alternatives to this? Is the D.E.I.S. meant to show various alternatives? If so why are there none shown apart from the Four Mile Creek alternative?

There is also an apparent contradiction regarding the likelihood of the already approved section of the line being built if the extension is not granted. Seemingly as an argument against the no-action alternative the D.E.I.S. states that "it is reasonable to conclude that even if the Extension is not approved TRRC would construct and operate the portion of the line that has already been approved at some time in the future." (page 3-16) This conclusion is not supported by the figures given in the D.E.I.S. The estimates of coal production from the Ashland area mines for 1995-96 have dropped from 13 million tons (1985 E.I.S.) to 2 million tons. (page 7-1-8). Would a coal production of 2 million tons be enough to warrant the building of the railroad without the addition of 15 million tons coming from the Decker area and Wyoming mines?

In fact it seems more reasonable to assume that without the added benefit of coal from the Decker area and Wyoming mines made possible by the extension, the Miles City to Ashland line would not be economically viable at any time in the future. What are the facts of this matter? Will the original line be viable without the extension? Has this been adequately assessed and by whom?



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BONES BROTHERS RANCH

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Approved and Ralified Statute Sheridan, Wyoming, and Fourth, Montana
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This raises the question of limiting the time allowed for TRRC to begin and to complete construction of the line if the approval is granted. The threat of a railroad "at some time in the future" has serious negative impacts on the lives of the people along the proposed route, including the "clouding" of the title to the land and the stress of having to fight an unvisited railroad. Therefore TRRC should be required to begin construction within a limited time if the approval is granted. Then in order to avoid procrastination on the part of TRRC and possible years of inconvenience to affected landowners they should be required to complete construction within a reasonable period. Time limits are not discussed in the D.E.I.S. but should be given serious consideration. Will there be any time limits placed on TRRC for commencement and completion of construction? If not why not?

The language used in the D.E.I.S. does not give the impression of an unbiased statement. In fact the railroad seems to be supported by most of the conclusions drawn and given the benefit of the doubt by the fact. Statements such as "the presence of the railroad through these recreational homelands could reduce the market value..." (page 4-6) are clearly biased in favor of the railroad and are found throughout the D.E.I.S. This is frustrating and depressing to those of us who believe that the only real alternative is NO-BUILD. Is an environmental impact statement supposed to be an unbiased document? Is the D.E.I.S. for the TRRC considered fair and unbiased? By whom?

The D.E.I.S. shows a complete lack of engineering detail and no specific measures for mitigating potential negative impacts. How then has TRRC been able to come up with cost estimates for the construction of the line? Are these not pure speculation? If so how can TRRC claim that its proposal is economically viable?

Finally the "assumed value for agricultural land of \$162 per acre" is an insult to the landowners of the Tongue River Valley.



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BONES BROTHERS RANCH

BIRNEY, MONTANA 59011

Apprentice and Railroad Routes: Sheridan, Wyoming, and Forest, Montana
Telephone and Express Address: Sheridan, Wyoming

DIRECT IMPACTS: The following are some of the direct negative impacts that this proposal could have on our lifestyle and ranch operations, none of which are adequately presented in the D.E.I.S.

DISRUPTIONS: the building of this railroad would cause serious disruptions to our lives both during construction and for the life of the line (and beyond).

The most direct and permanent of these would be the bisecting of our "Bull Pasture" by the proposed route of the line. This pasture is very important to the operation of Bones Brothers Ranch as it is isolated from the rest of the ranch. This allows us to keep our bulls separate from the rest of the herd when they are not required for mating duties, preventing them from mating at the wrong time and from tearing down fences to get to the cows.

Although it is not made clear in the D.E.I.S. or shown on the maps it would seem very likely that TRBC would want to locate the proposed Birney area construction center right in our "Bull Pasture". This would render it useless for the three years proposed for construction of the line and seriously affect the soil and the grass growing potential of the pasture for ever.

Assuming that there is grass left for the bulls to eat we would require an underpass for them to get to water. This will require holding pens at either end if we are to have any chance of moving the bulls through, and exceptional fencing to prevent them straying onto the ROW. If any were to enter the ROW we would like to have barriers at the limits of our land to prevent them straying for miles down the line and a written agreement from TRBC to pay the full value of any animals killed.

The residents of the ranch currently cross the proposed ROW at least 60 times per week. The D.E.I.S. mentions a proposed bridge along Hanging Woman Creek Road which when completed would prevent delays at crossings. However, during construction a large percentage of those 60 trips are likely to be delayed. Then on the way to Sheridan we may have to cross the line 5 times. With trains travelling at speeds up to 50mph it could be quite possible for someone driving between Decker and Birney to meet the same train 5 times in one journey. Has this possibility been considered.



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BONES BROTHERS RANCH

BIRNEY, MONTANA 59011

Apprentice and Railroad Routes: Sheridan, Wyoming, and Forest, Montana
Telephone and Express Address: Sheridan, Wyoming

particularily in relation to emergency vehicles in life and death situations? What delays could result?

The presence of a construction center housing up to 109 people near Birney could cause many further disruptions to our lives including: increased traffic, dust, noise and accident risk on the roads (particularly the access road to the Custer National Forest which runs within a few hundred yards of our houses); greatly increased pressure on limited recreational facilities; increased trespassing and poaching on private lands; greatly increased crime in an area where currently very few people ever lock their houses when they leave them. Have any of these and other possible effects of these construction centers been taken into account? If so why are they not mentioned in the D.E.I.S.?

Also not mentioned are the inevitable disruptions to our electricity and telephone connections during the construction period which are likely to be regular and frequent. How regular and frequent will they be and what are the possible effects of this?

FIRE: the operation of this railroad would pose a serious fire threat to the Tongue River Valley particularly due to its remoteness and the absence of fire fighting crews for much of its length. Not mentioned in the D.E.I.S. is the increased risk of fire from trains under heavy braking on the steeper sections of the Four Mile Creek alternative. Is this a real threat?

Also not mentioned is the fact that with a two man crew and cabooseless trains there would be no-one present at the side of the train to spot any fires as they start. A manned caboose on every train would greatly mitigate the increased fire hazard. Why is this not suggested in the D.E.I.S.?

WEEDS: Bones Brothers Ranch is particularly sensitive to the problem of weeds because we make every effort not to use any chemical insecticides or herbicides on our pastures. For this reason we would not want regular spraying of weeds along the ROW which bisects one of our pastures. How would we want weeds escaping from the ROW and spreading over our land. If mechanical weed control was used in the ROW, what method would be used (sowing, blading, pulling) and what side effects would it have? (eg dust or the spreading of



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BONES BROTHERS RANCH

BIRNEY, MONTANA 59011

Apprentice and Railroad Routes: Sheridan, Wyoming, and Forest, Montana
Telephone and Express Address: Sheridan, Wyoming

seeds to private land.) If weeds do spread onto our land will TRBC be responsible for the control of weeds outside the ROW? Who will enforce this?

TRBC claims that the "ballast" would be cleaned before placement on the ROW as a means of mitigating weeds. Who would enforce this and how do they propose to do it? Would it involve the use of chemicals?

NOISE: perhaps the most extraordinary thing about living in such a remote and unspoiled area is the wonderful tranquility which comes from being able to stand quietly at any time of the day and hear no human-made noises. Apart from an occasional passing vehicle or farm machine, most of the time we can only hear natural sounds. This is the way we like it. The D.E.I.S. does not mention noise quality at any point. It ignores the fact that unnatural noise is far more disturbing than the sounds of nature regardless of the decibel level.

As for the discussion on noise levels, it is completely inadequate and poorly explained. It only covers noise levels at 500feet and at 2000feet from the R.O.W. this is ridiculous. I used to live over three miles from a railroad and at night the trains would wake us up and rattle our windows. This was largely due to ground carried noise and vibrations which are not touched on in the D.E.I.S. Will the final E.I.S. consider these effects?

The decibel levels quoted in the D.E.I.S. also need to be clarified. Why has the level of 65dBA been chosen as the key figure? I suspect that this is the level at which noise is proven to be detrimental to health. The figures given are that the current ambient noise level is from 20-40dBA and that this could increase to 62.9-69.2dBA. (page 4-9B). What is not explained in the D.E.I.S. is that the decibel scale is a logarithmic scale in which (at any point on the scale) an increase of 9dBA translates to a new noise level twice as loud as the starting level. (i.e. 64dBA is twice as loud as 58dBA which is twice as loud as 52dBA which is twice as loud as 46dBA which is twice as loud as 40dBA. In other words the ambient noise level could be doubled four times - i.e. increased 18 times! (2*2*2*2=16) If it increases from 40dBA to 64dBA, in the worst case an increase from 20dBA to 69.2dBA represents a new ambient noise level more than 256



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BIRNEY, MONTANA 59011

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times louder than the existing ambient noise level. ((69.2/20)*9.2 = 256). The D.E.I.S. also makes the point that the noise levels will be even louder during construction. Is this considered acceptable and by whom?

These figures may seem incredible but they are taken from the D.E.I.S. and are no more ridiculous, sweeping and imprecise than those in the D.E.I.S. In short, the discussion on noise impacts in the D.E.I.S. is totally inadequate. Why does it not consider the effects of mechanical noise on concentration and health? Why does it not consider the disturbance to people and wildlife more than 2000feet from the R.O.W.? Why does it not consider ground transmitted noise and vibration? Why does it not mention the effect of every train blowing its whistle at every crossing every hour and fifteen minutes every day and night of the year? The figures given are not explained and all these things are glossed over with a few sweeping, imprecise, and misleading figures on decibel levels.

The D.E.I.S. also states that the ICC requires the assessment of noise impacts to sensitive receptors when baseline levels experience a 4 decibel increase" (page 4-100). The D.E.I.S. then proceeds to ignore this statement entirely. There are no accurate figures given for the current baseline levels in the project area only those "typical of rural areas" (page 4-9B). It would seem that no-one has made any noise level readings in the area so how can anyone know if the level increases by 4 decibels? From my experience with railroads I would guess that anyone living within about 2 miles of the ROW will experience a 4 decibel increase in baseline noise level. Why has this not been considered?

These issues must be investigated further as the noise produced by the construction and operation of this railroad would be one of the most significant environmental impacts it could have.

As for the mitigation measures proposed they are totally inadequate. There is no mitigation proposed for the noise impact of the operation of the railroad which is not surprising since these impacts are not made clear. The only measures proposed are, that during construction TRBC try to keep quiet out of daylight hours on weekdays "to the extent



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BONES BROTHERS RANCH

BISENY, MONTANA 59111

Alperts and Railroad Stations, Sheridan, Wyoming, and Forest, Montana
Telephone and Express Address: Sheridan, Wyoming

Telephone Area 406-428-3331

practicable" (which means not at all); that they build their construction center more than 2000feet from Birney; and that all their equipment comply with govt. regulations. This is a farce. The noise created by this proposal would have a hope negative impact on what is currently one of the most tranquil places to live anywhere and this is all they propose to do about it? Is the discussion of noise impacts and the mitigation measures proposed considered adequate, and by whom?

The only way to mitigate the real effects of the noise of this railroad could be not to build it. However, why have no noise reduction measures been proposed? What are the possibilities of plating, speed limits, timetabling, and rerouting the railroad to reduce noise impacts? What other possibilities are there?

VISUAL: as well as being one of the most peaceful places to live this area is also one of the most beautiful. I spent three years travelling around the world (in 1988,89,90) and in that time I saw few places to match the subtle beauty of the Tongue River Valley. Why is this only touched on once in the entire D.E.I.S.? On page 2-4 there is a brief mention of "scenic canyons" in relation to the recreational potential of the river immediately below the dam.

For the people who live here it is much more than an issue of "recreational potential". We love this place, its beauty, its quietness, its unique character. We love to live here the way it is, relatively undisturbed. We love the remoteness and the gravel roads which keep people away. Why are the beauty and uniqueness of this area completely ignored in the D.E.I.S.?

On page vii of the executive summary of the D.E.I.S. the comment is made that the railroad would "alter the character of the landscape for the duration of the line's operation". This is not true. This railroad would alter the character of the landscape for all time and this fact needs to be made very clear in the final E.I.S. Do the authors of the D.E.I.S. acknowledge the beauty of this valley? Do they agree that a railroad is an ugly thing, that it will permanently scar the landscape, and that it will not just disappear when the coal contracts and the "economic development" run out? We who live in the valley will see it, hear it, smell



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Telephone and Express Address: Sheridan, Wyoming

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it, and feel it every day and that is not an attractive prospect.

DUST: the D.E.I.S. does not pay sufficient attention to the potential dust problem. In a recent letter a rancher from Gillette, Wyoming gave the following description of the dust caused by construction of a railroad through his leased pasture: "...the dust was so thick that the grass became covered and the livestock wouldn't eat it. I called in the State air quality people to place monitors in our area and the first week the results were many times the allowable levels but nothing was done. The water wagons were only used where the line required compaction and the cuts and loose dirt were allowed to blow. I finally moved my cows out and doctored the calves the rest of the summer."

The D.E.I.S. does not pay enough attention to this potentially major problem. In the discussion on air quality (pages 4-93 & 4-94) the problem of construction created dust is not clearly stated. Who will monitor air quality levels and how, when, where? What is considered an acceptable amount of dust? What action will be taken if agreed levels or govt. standards are exceeded?

In the mitigations section are listed a number of inadequate measures to mitigate air quality impacts. These raise a lot of questions. How often should machinery be inspected to ensure clean and efficient running? What is an acceptable speed limit within the ROW? How frequently should dust suppression measures be conducted and will water be the only method used (not detergents or oil)? Most importantly who will be responsible for ensuring that TRRC abides their agreements? How will they enforce this and who will be accountable if problems occur?

The D.E.I.S. claims that coal dust "should not pose a threat to Federal, or Montana air quality standards" (page 4-95) but what threat does it pose to landowners pastures, soil chemistry, and the aquatic ecologies close to the proposed route?

Another aspect of the air quality impacts of the operation of the railroad not covered in the D.E.I.S. is the effect of potential new mines in the Birosy-Ashland area. It states that "the primary source of air pollutants from the operation of the railroad would be the combustion of diesel



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fuel by locomotives" (pages 4-95). However if the presence of the railroad leads to the opening of new mines in the area then this will have a much greater detrimental effect on the present high standard of air quality than just the exhaust from the locomotives. The D.E.I.S. states that "higher than normal air pollutant concentrations have occurred around existing coal mines" and it seems likely that this would also be true of any new mines developed as a result of this railroad.

As the potential economic benefits from new mines seem to be one of the main arguments in favor of the proposal should not the environmental impacts from these mines be considered as part of the overall impact of the railroad?

SOIL: closely alligned to the dust problem is that of loss of soil. The D.E.I.S. states that "during construction ... wind and water erosion would result in temporary losses of soils." This is ridiculous, any loss of soil would be permanent. What is considered a "temporary loss" is TRRC proposing to replace lost soil?

In the mitigations section (page A-24) it is stated that "on cut and fill slopes steeper than 3:1 but less than 7:1 TRRC would construct serrations parallel to the slope to avoid erosion and to stabilize seed beds." In fact serrations parallel to a steep slope would speed water flow thus encouraging soil erosion and washing away seeds. Serrations perpendicular to the slope however would have the desired effect. Is this a mistake by the authors?

Regarding the possible construction of 3-4 borrow pits the D.E.I.S. states (page 4-6) that "the land would be impacted only during the time of construction" (this ignores the fact that there would be a hole left in the ground) and that "long term impacts would be mitigated by reclamation." How is it proposed to do this? Does TRRC propose to refill the hole?

The above comments demonstrate a lack of careful thought in the preparation of the D.E.I.S. and a lack of understanding of the nature of soil and its importance to the rancher. Without good soil we cannot grow good grass, and without good grass we cannot raise cattle. Ultimately we depend on soil and water for our continued livelihood. Is this fact clearly understood by those considering building a



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BONES BROTHERS RANCH

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- will TRRC pay for the control of weeds that spread outside the ROW?
- who will monitor and enforce TRRC's promise regarding weed control? What measures will be taken if these promises are not kept?

Regardless of the comments made above about the proposed mitigations we sincerely believe that the only real way to prevent the many detrimental effects of this railroad is not to build it.

Prepared by Andrew Norman Lemann. (Signed 10/12/92)

Andrew Norman Lemann 10/24/92

On behalf of Bones Brothers Ranch Inc.

Irving Newman Alderson

Signed Irving Newman Alderson (10/12/92)

Jean Catherine Alderson (10/12/92)

Jean Catherine Alderson

Mary Roberts Alderson (10/12/92)

Mary Roberts Alderson



Print on by [Signature]

Rosebud County Weed District
P.O. Box 962
Forsyth, MT 59327

If there are any questions concerning this matter, you are encouraged to contact the Rosebud County Weed District by writing to P.O. Box 962, Forsyth, Montana 59327, or calling either (406) 356-7608 or (406) 356-2251.

Dana White
Section of Energy and Environment
Room 3214
Interstate Commerce Commission
Washington, D.C. 20423

Sincerely,

RE: Finance Docket 30186 (Sub. No. 2)

Rosebud County Weed Board

Sirs:

We, the Rosebud County Weed District and Board of Directors, are concerned with the construction and operation of an additional rail line from Ashland to Decker, Montana. In review of the Draft Environmental Impact Statement [Finance Docket No. 30186 (Sub-No. 2)] and the verified rebuttal statements of the Tongue River Railroad Management, we find very little information addressing the problem of noxious weed control in both the construction and operational phases of the railroad.

[Signature]

Art Hayes, Jr., Chairman
Robert Marneaux, Vice Chairman
Arthur Polch, Member

Our concern is that through the building and operation of the railroad, many new species of noxious weeds will be introduced into the area, and therefore, left to spread to adjoining private, state, and federal lands. Many of these noxious weeds are hard to control and very expensive to eradicate. Most of these Category I and II noxious weeds will render the land that they infest unusable.

[Signature]
Harold E. Stepper, Weed Supervisor

If, in effect the railroad is built, the Rosebud County Weed District would require the washing of all equipment used in its construction prior to entering the area and before leaving the area within the boundaries of Rosebud County. Also, the Weed District would require the use of weed seed free ballast and other construction components (i.e. fill dirt) that would be brought into the County.

The Rosebud County Weed District would also require that the Tongue River Railroad have in effect an adequate weed management plan prior to the construction of the rail line. Also, the Weed District would require that the railroad comply with the weed management plan by using the correct chemicals and their recommended rates for each specific noxious weed treated.

The Rosebud County Weed Board would recommend a bonding requirement of all right-of-way land similar to that used in the Federal and State Reclamation laws for coal leases. The period of time recommended for these bonds would be twenty (20) years.



United Transportation Union

COMMENTS CONCERNING THE
DRAFT ENVIRONMENTAL IMPACT STATEMENT
FOR THE
PROPOSED TONGUE RIVER RAILROAD
FINANCE DOCKET NO. 30186 (SUB-NO. 2)

SUBMITTED BY

RANDALL S. KRUTSON

Local Chairman - United Transportation Union #951
Established Resident of Sheridan, WY

My name is Randall Krutson and I have been a resident of Sheridan, WY for over 19 years. During this entire time I have been employed as a brakeman and conductor for the Burlington Northern Railroad and am also currently serving as Local Chairman of the United Transportation Union, Local #951. In this latter capacity, I represent the approximate 135 conductors, brakemen and switchmen in Sheridan that would be adversely affected by the construction of TERC's 41 mile extension. As the union's local bargaining agent, I am directly involved with this terminal's manpower allocation with regard to the trainmen. This responsibility includes the authority to adjust the manpower within the individual pools and extra board respective to the flow of traffic.

Our membership would like to collectively dispute the DEIS and TERC's unrealistically conservative estimate of the elimination only 42 rail jobs in our terminal and its minimal effect on our community contained on pages 4-17 through 4-20 of the above referenced DEIS. We also dispute the alleged existence of job protection for the employees so affected. We find these figures to be deficient of any practical and experienced knowledge of train operations and the allocation of crews to operate them. It is also void of any ramifications likely to befall our terminal should this traffic be rerouted.

After personally observing the operations of the Sheridan terminal for the past 19 years, I feel very comfortable anticipating the immediate job loss in Sheridan to be much greater than the DEIS would suggest. Our interdivisional Run-Through Pool exclusively operates most of the coal traffic targeted by the Tongue River Railroad and its construction would eliminate the entire pool. Given the fact that there are seasonal highs and lows, this pool still consistently maintains approximately 8 crews in Sheridan. Should an empty coal train arriving at Sheridan be destined to be loaded at either the Decker or Spring Creek mine, it

Page 2
UTU #951 COMMENTS - FINANCE DOCKET NO. 30186 (SUB NO. 2)

is operated to the respective mine by a crew in our Short Turn pool. Once at the mine they will load the train and return it to Sheridan, time permitting. Our Short Turn pool has been designed to handle all turn around service out of Sheridan, more precisely, all traffic that by nature of its destination, leaves Sheridan and returns to this terminal in one continuous tour of duty. Since the vast majority of this described traffic are coal trains destined for Forsyth, this would eliminate another 3 to 4 crews. Due to the grade in the immediate proximity of Sheridan, most of these trains need to be helped by helper engines during the initial part of their run. Here again, we are facing the loss of 3 or 4 more crews. So far this would account for the loss of 14 to 18 trainmen permanently occupying these crews. We must also remember that due to the nature of our job description, we do not enjoy the luxury of regularly assigned rest days. Accordingly, we maintain an extra board to fill these assignments when a regular crew member needs a day off, is sick, or is on vacation. The amount of extra board employees needed to supplement the regular assignments, presently and in the past, averages about 1 extra man for every 3 regular men and in some cases has precipitated more. This brings the number of trainmen immediately affected by the construction of this railroad to approximately 21 to 24. This constitutes nearly 15 percent of our active conductors, brakemen and switchmen in Sheridan. For every trainman's position there also exists an engine man's position bringing the job elimination count in Sheridan for just trainmen and engine men to between 41 and 48. These figures do not reflect the many supervisory, clerical, maintenance and other support positions that would concurrently be lost. Myself and the other rail labor representatives estimate the total immediate rail jobs lost in Sheridan to be between 65 and 70 should this extension be constructed. Of this total figure, less than 5 percent are eligible for any form of job protection. The remaining affected employees will be forced to exercise their seniority at other terminals if they have the seniority to do so. Eventually, through the "domino effect" the junior men in their respective seniority district will be furloughed. The lack of so implied job protection would also negate the effect of individual severance programs negotiated with the UMW referred to on page 4-19, paragraph 4 of the DEIS.

The coal traffic targeted by the Tongue River Railroad accounts for at least 65 percent of Sheridan's originating traffic. This sort of traffic necessitates a crew change terminal, either of the home or away-from-home variety, to operate these trains from their point of origin. This factor is one reason Sheridan has remained undisturbed as a crew change terminal for both originating and through traffic. It is our fear that the loss of the overwhelming portion of our originating traffic could be the decisive catalyst to completely eliminate Sheridan as a terminal, thus jeopardizing well over 300 rail jobs in our community. This fear is well validated when you consider a national trend by our

nation's rail carriers for longer runs known as run-throughs. The overall distance traveled by our through freight traffic between Gillette, WY and Laurel, MT, with a crew change in Sheridan is 258 miles. This could make Sheridan a candidate for elimination considering that the Union Pacific Railroad just last year implemented a run-through in excess of 300 miles in the southern part of Wyoming. It is relevant that preceding the negotiations leading up to the signing of our 1983 National Contract that the parties representing this nation's rail carriers requested and were eventually granted the removal of the most prohibitive language when negotiating run-throughs with labor. The construction of the Tongue River Railroad would not only greatly reduce Sheridan's strategic importance as a crew change terminal with respect to this area's mines, but by reducing our local work force make the introduction of run-through negotiations more cost effective for the Burlington Northern. In regard to our employer's continuing search for terminals to eliminate, it is our foremost fear that Sheridan would be eliminated as a crew change terminal. The ramifications of such a job loss in our small community could be felt for generations to come.

Both the undisputed and potential job losses could also be compounded by an industry option known as trackage rights. These rights, if granted by the ICC, allow for employees of foreign railroads to operate trains on other railroads. Since some of the targeted trains will continue on from Miles City to Gillette, WY, it would not be unusual for TRRC to request such rights all the way to Gillette. This would further eliminate BN jobs needed for this traffic. We may also surmise that since an established terminal does not exist at Miles City, trackage rights could be requested between Miles City and Glendora, MT where an extensive terminal does exist and further eliminating BN jobs in this area. These options are given support by TRRC's unreasonable claim that only one crew would be required to operate an empty coal train from Miles City to the respective mine, load it and return to Miles City. In 1991, during national contract negotiations and testimony before Congress resulting from Presidential Emergency Board 219, it was determined that due to the many variables and mechanical limitations present, the average accumulated speed of a train is no more than 25 to 30 mph. Due to the distance between Miles City and the mines and the time needed to physically load a train, it will be virtually impossible for one crew to complete this trip round trip in less than 12 hours as required under the Hours of Service Act. Thus, TRRC's need to establish longer runs with crew change points and the likelihood for a request for trackage rights. This very real scenario and its implications should be examined in the DEIS.

We would also like to question why the DEIS has made trivial the immediate job loss effect in Sheridan by recognizing it as only one-tenth of one percent of the county's 1987 employment base of

consistently and quickly suppressed. This could only be done if (1) the fire was immediately spotted and reported by a landowner, passerby, or following train and (2) if a fire response team was readily available and in the immediate proximity. Due to the sparsity of residents, their preoccupation with every day tasks, no immediate ... traffic, either opposing or following, the absence of caboose or anyone positioned at the rear end of the train, and no indication in the DEIS how these fires would receive "immediate" attention, it is flawed to think they may be so easily contained. My personal observation of the destructive capabilities of unobserved fires on the Burlington Northern main line suggests there will be irreparable damage to fields, buildings and everything contained therein.

By the nature of this industry, the TRRC will also bring contaminants to this region including increased levels of exhaust, oil and diesel fuel from the locomotive power and coal dust. The former pollutants have already been found to have an adverse effect on the environment. The short and long term effects of coal dust spilled and released from the open top hoppers is something the DEIS has failed address. It has been suggested that the majority of this dust will be released during the initial portion of transportation. While these particles are indeed heavily released during the initial journey as mentioned, it is not mentioned that every time a train experiences in-train forces known as "slack action", the coal load is shifted and more particles are released. Due to the mechanical nature of operating a train, this slack action is unavoidable and ever present during the duration of the trip.

In conclusion, we would like to reiterate the short comings of this DEIS. The operation of the railroad and its potential impact on the surrounding areas has not been critically examined mostly due to deficient and incomplete information provided the Section of Energy and Environment by the Tongue River Railroad Company. It is also been the failure of this document to better research the coal market before concluding on page 3-16, paragraph 2 that the original 89 mile line will be built regardless of whether or not the 41 mile segment is allowed. It is unreasonable to suggest that the construction of the original line and the development of the coal reserves it will service is financially feasible considering today's market prices and trends. It would also be unreasonable to suggest that the BN line segment mentioned in paragraph 4 of the same page and extending through the Crow Indian Reservation would ever be abandoned. This segment is located on one of the shortest and most strategic routes serving the Pacific Northwest making it of great economic importance and vital to our national defense.

12,490 (page 4-17, paragraph 5, DEIS)? This referred to employment base includes all full time and part time employment regardless of income. Since the jobs in question are within the top 10 percentile according to income, their savings potential as relative to the total income of the employment base would be considerably more substantial. Certainly the loss of a \$45,000 per year real job coupled with the accepted economic multiplier of 1.8 and the subsequent softening of the real estate market would have a more negative impact on this community than a part time position at a fast food restaurant. The DEIS fails to reflect this. Should Sheridan cease to be a terminal the loss of earning potential would have to be adjusted at least 5 times greater.

Page 4-20, paragraph 1 of the DEIS implies that the decreased transportation costs available to the Docker and Spring Crank mines will lend a stabilizing effect to Sheridan. Would this not give a transportation advantage to the Powder River area as well? We fail to recognize the implied security and stabilizing effect on Sheridan when the competitor mines would share the same mileage advantage. The DEIS fails to address how optimistic and unsubstantiated coal production will replace the undisputed and isolated job loss in Sheridan.

With regard to the actual construction and operation of the TRR, we believe the DEIS ignores many of the tangible and intangible repercussions that would be felt by this region. The fact that the preferred and alternative routes are geographically located in rural areas does not help justify the building of this railroad as the TRRC suggests. Very little information has been provided as to the effect of severance and isolation of ranch parcels and aesthetic scarring of the pristine valley with regard to property devaluation. This line would severely limit the remote and isolated appeal of this region.

As railroad employees we can attest to the intrusion that will accompany living with a railroad. Its mechanical presence and constant noise will bring an unwelcome impact on the environment and quality of life. Page 2-28, paragraph 1 of the DEIS gives no indication of the long term effects that the constant, monotonous drone of locomotive engines at indiscriminate hours will have on this environment. Railroad right-of-ways are also a constant source of fires ignited by both heated emissions from the locomotives and from mechanical friction during braking. Page 4-7, paragraph 3 of the DEIS states that fires would be limited to one every 50,000 to 170,000 train miles. What has not been considered is that this particular railroad will route loaded coal trains on a downhill river grade. Since loaded coal trains weigh 24 to 3 times as much as freight trains they require considerably more braking, hence, an increased tendency to start fires. This paragraph also states that these fires could be kept relatively small, rarely exceeding 3 acres. It is unrealistic to suggest that these fires would be

Sincerely,

Randall S. Knutson
UTV Local Chairman #951
12 Bury 339
Sheridan, WY 82801

DRAFT ENVIRONMENTAL IMPACT STATEMENT

FINANCE DOCKET NO. 30186 (SUB-NO. 2)

TONGUE RIVER RAILROAD COMPANY - CONSTRUCTION AND OPERATION OF AN
ADDITIONAL RAIL LINE FROM ASHLAND TO DECKER, MONTANA

In order to make an assessment of the Draft Environmental Impact Statement, we must distinguish some facts from fiction.

1. Tongue River Railroad (TRR) is not a railroad company. This group of people are only out to secure a permit. Their only background is in securing permits, not building or operating railroads. Any cost of construction, labor force, maintenance and operating costs are pure guesses.

2. Tongue River Railroad's scenario is the great expectation of vast coal use in the Northern Tier States. It is the same thing they said on the original permit, (but not built) 89 miles of railroad. It has been nearly 10 years, but the railroad has not been built because there is no sale for the coal at Monco. There has been no new plants built in the Northern Tier States and none planned in the near future. In fact, with the closing of some 19 C.M. plants and associated businesses there will be a greater decline in coal use. So for them to say this is for a public need is untrue. Not only for the 41 miles extension but also the original permitted (not built) railroad. This permit application should be denied, plus the original permit should be withdrawn because of inaction and the fact it is not needed. Now it is only clouding the titles of the ranchers it would cross.

3. The simplistic way Tongue River Railroad addressed the Cheyenne Indians and their concerns regarding their entire life style only signify their uncaring for human life and the rights of people to exist with human dignity and to protect their culture. We have fought wars around the world in order to protect people's right.

4. Let's discuss the ranchers in this beautiful valley and their access. Yes, Tongue River Railroad states we will discuss this with each rancher as we go out to secure the permit first. This is the wrong way to start. How can you negotiate with a company with a certificate of need - you don't. There is a large portion of this area that would be inaccessible to water for livestock and wild game, especially antelope who don't jump fences. Most of this area would have to be elevated track.

8. The Tongue River Railroad is not a railroad or a railroad builder but only permitter and promoters. Tongue River Railroad would try to sell this permit to someone else. The company that will or would build the railroad would have their own access to materials and supplies needed. I feel all the listed material in this report is flawed as to the amount of money to be spent in each community, mainly the \$8 million in Sheridan, Wyoming. The numbers with money and employment are pure conjecture. Whoever operated the railroad would choose to locate personnel where they choose. There is not a B.M. terminal at Miles City so that would not be the necessary change point of crews. More than likely with track rights, the crew would be sent on to Glendive, Montana. The same as NBL crews not stopping at Sand Point, Idaho, but with track rights continue on to Spokane, Washington or with track rights could go on B.M. track to destination.

9. Maintenance, weed and fire control. Tongue River Railroad is inexperienced in the operation of a railroad. The maintenance of the railway for the first 10 years would be done by subcontractors because the maintenance on a new track would be less. This is also flawed because there is more maintenance needed on an new track than an older one due to the fact of grade settling. More than average derailments, especially in tunnels and bridges, where the most danger can happen to the environment. This only shows their inexperience in train operation. The areas they are to travel over is a major cattle area with very little cultivated ground. Most of the year you are dealing with a tinder dry range area with rough terrain and really not very accessible for fighting fires. The greatest cause of man made fires are trains, especially trains without cabooses. This would be a great hazard to the range land and National Forest in the area. They talk of state of the art fire equipment. Yellowstone Park probably has the best in the world but the whole park darn near burned down a few years back. Noxious weeds are spread and virtually uncontrollable and I am sure these problems can't be controlled with 240.

10. Economic disaster for Montana. With the State of Montana exporting about 75% of it's production, we could see a potential loss of 10 billion dollars. This loss would be in severance tax alone, not including all other taxes associated with the coal mining business, possible abandonment of track to Sarpy Creek and maybe the line from Sheridan, Wyoming to Huntley, Montana.

CONCLUSION

Tongue River Railroad not being a railroad company or a railroad construction company, all cost numbers, employment numbers. Money spent for construction is purely speculation. No funding has been proven for this project. It's hard to believe you can extend a railroad that hasn't been built. Two problems must be taken into consideration when your determination is made. The Monco mine may be the last to be mined. Presently no contract to open the mine because the coal is high in sodium and is quite unsealable as it will not burn on it's own and has to be greatly blended. Secondly, there is no

5. The market area they want to capture is already being served by B.M. and their employees. Their claim that any decrease in production at Sarpy Creek, Big Sky and Colstrip would be because they produce non compliance coal. All of the plants supplied from these mines have scrubbers and do comply with all standards. They claim no responsibility for destroying their economies. The fact they will make Wyoming coal more attractive with the shorter route will change our competitive advantage. The Environmental Impact Statement is flawed in many ways. Not only are they asking for a 42 mile extension from Ashland to Decker, but apparently want track rights to Dutch. This is a junction eight (8) miles east of Sheridan, Wyoming. This would surely put Tongue River Railroad right into the heart of Wyoming cheap coal. This would bypass all Sheridan B.M. employees. With this assessment of the Environmental Impact Statement, you could wipe out all Sheridan and Forsyth crews. Tongue River Railroad with track rights could house crews at Glendive, Wyoming and run to Glendive, Montana, only approximately 100 miles. With coal 25¢ cheaper in Wyoming, compared to Montana, this would put Spring Creek and Decker in a very dangerous situation. They wouldn't be able to compete in this very soft coal market. So in a nutshell, what we are looking at is a great possibility of doing away with all B.M. high paying jobs in Southeastern Montana. All this under the disguised economic development of Montana coal. Should the coal traffic divert at Dutch? If this was to happen, job loss due to loss of traffic, there would be a possibility the B.M. would not have to buy the homes of the railroad workers. The rail workers would have to absorb the loss of real estate and would have to go on their own to find jobs. Many of these workers might be forced to look for other employment, not railroad jobs.

6. The biggest flaw is the economic losses to the communities such as Hardin, Colstrip and Forsyth. First of all, Tongue River Railroad's reference to severance agreements between B.M. and their employees. There is none! Plain and simple. The loss of railroad and mining jobs along with business loss would be about 15 million per year. As for the great boom for Miles City - 40% of the total work force would be hired locally during construction. Miles City would get 70% of this - about 11 jobs. A good halistorm would create more jobs. Again, all of this employment is purely conjecture. The Tongue River Railroad people are not railroad builders but people securing permits only.

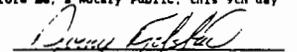
7. There are a lot of number and subjects in the report that I have no knowledge of. I am not a railroad person. However thick and glossy this Environmental Impact Statement is made to be, the one fact remains - they (TRR) laid out a fraud filled program at the Miles City hearing with the ICC. Now is Tongue River Railroad to finance this project? Cut a deal with B.M. to use the money the utilities are paying B.M. on their route from Sheridan, Wyoming to Huntley, Montana to Forsyth, Montana and east for use on the starter line. This would defraud the utilities to pay for the line while the train traffic was going over their shorter line. Contracts are written as to specific routes so this could not be done. Is there funding available for the Tongue River Railroad? The cost of building the Tongue River Railroad is too costly to build and the revenue is not great enough to pay for it. I am sure someone would lose a great deal of money. This should be ICC's main concern.

funding for the first 89 miles. Therefore, the whole project should be denied and permits now issued should be withdrawn. This tends to be the biggest scheme that has hit Montana in decades.


Dick Bertinson
P.O. Box 911
Forsyth, MT 59327

SUBSCRIBED AND SWORN TO before me, a Notary Public, this 9th day of October, 1992.

(SEAL)


Notary Public for the State of Montana
Residing at: Forsyth, Montana 59327
My Commission expires: 09-25-93

September 4, 1992

Dana White
Section of Energy & Environment, Rm 3214
Interstate Commerce Commission
Washington, DC 20423

Dear Mr. White,

This letter is in reference to Finance Docket 30186 (sub 02), i.e. the proposed Tongue River Railroad (TRR) construction in southeastern Montana.

I am the Superintendent of the University of Wyoming's Sheridan Research and Extension Center (SREC), which is an agricultural experiment station. The station is located 6 1/2 miles east of Sheridan, WY, on Hwy. 236. I am in contact with the Burlington Northern Railroad (BN) every day as the spur from the Sheridan-Gillette line branches at and runs through the SREC to the Decker and Spring Creek coal mines.

After reading the draft environmental impact statement I have some grave concerns. The first of these is noxious weed control, page A-24. Using screened ballast will help tremendously in the prevention of the introduction of these weeds, however, this solution is not the total answer as weed seeds are carried by the railroad cars from other sections of the line. Here at the SREC, the BN used the same construction procedure of screened ballast and at the moment I am fighting infestations of leafy spurge, Russian knapweed (both noxious weeds), and puncturingvine. The weeds were not present on the farm before the railroad spur was built to Decker in the early 1970's. Binsweed grew on the farm prior to the railroad, however, I am continually fighting the spread of this noxious weed from the BN right-of-way. The leafy spurge, Russian knapweed, and puncturingvine infestations started due to weed seed falling off the railroad cars or railroad maintenance vehicles and then taking root in the railroad bed or right-of-way road.

At the SREC we are responsible for the production of the Foundation cereal grain seed for the certified seed growers in the state of Wyoming. There is a zero tolerance for any leafy spurge, binsweed, and Russian knapweed seed in all Wyoming certified seed classes. I strongly feel increasing the number of coal or freight trains traveling through the SREC via the TRR will accordingly increase the noxious weed infestations on the right-of-way in years to come.

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In addition, most of the coal trains will not have a caboose, so if a fire does start it may go undetected until a rancher or the next train sees the smoke. I know that a range fire burning unattended in this windy country for even a few hours is going to spread over more pasture than just 3 acres. The terrain and forest in the Tongue River Valley are completely the opposite in accessibility and fire fuel when compared to the Gillette area, so a comparison between these two locations is ludicrous.

On page 4-7 the ranchers say they are concerned with trespasses and I agree with them. With the Decker-Spring Creek spur going through the farm we have noticed a significant increase in the trespasses of individuals onto the farm using the railroad right-of-way with subsequent property and crop damage the result. The TRR may put up no trespassing signs, but unless they implement locked gates, trespassing will occur. I feel the ranchers have a real concern on this issue.

Due to grave concerns on noxious weed invasions and increased fire danger both on the SREC and the Tongue River Valley, my opinion is the proposed Tongue River Railroad should be denied a permit by the ICC for construction and operation.

Sincerely,

Roger Hybner
Roger Hybner
Superintendent

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UW

Leafy spurge is a very difficult to control perennial weed because it reproduces by roots spreading and pushing up new buds or by seed. Applications of pesticide must be sprayed during specific plant growth stages for any hope of control. The plant has a root structure that can go beyond 12 feet into the soil. Russian knapweed is a biennial which uses a toxin given off by the roots to kill neighboring vegetation enabling the weed to flourish. Any form of knapweed is hard to control because of the weed's rapid spread over the surrounding country.

The Tongue River Railroad say they will spray soothly and use mechanical means for weed control, however, if they can be compared to BN practices this will occur rarely and not very well done and noxious weeds are more than likely to infest private land bordering the railroad. The rough terrain surrounding the proposed railroad is mainly not conducive to aerial or equipment spraying. Economically, chemical weed control efforts by landowners may only be accomplished using backpack sprayers. Fighting these weed infestations will cost ranchers via reducing land values, decreasing their herds due to diminished range carrying capacities, and paying labor expenses from the hiring of trained spray crews. Considering the size of many of the ranches in the Tongue River Valley, the degree of the weed species infestation could be enormous. Backpack sprayers can only cover a small amount of land in a period of time when compared to conventional methods, resulting in not all the weed infestations being treated during the summer and early fall months. This will eventually lead to more and more weed plants and seed to spread over the countryside.

My second concern is range fires and they are definitely a certainty with the introduction of the Tongue River Railroad. As a volunteer fireman for the Clearmont Fire District, I have seen several fires burn up to 30,000 acres each in the same type of terrain as the Tongue River Valley before suppression is possible. Much of this country is so rough and isolated that the few roads are the result of a caterpillar blading a roadbed along a sidehill through a pasture. I've been on range fires where the only method to fight a fire in a ravine or draw was to let it burn up to the ridge. Much of this country is too rough to drive an old Mill Army 6 x 6 over. Most of the firefighting equipment being used to fight these fires in the southeastern Montana and northeastern Wyoming country is with outdated, small equipment owned by the ranchers or the fire districts. The railroad say they will have "state-of-the-art" equipment (page 4-7), but what use is the equipment if you can't get to the fire?

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UW

Greg Gordon
1020 1/2 Briar
Missoula, MT 59802
(408) 342-2187
September 7, 1992

Comments on Tongue River Railroad Draft EIS
Finance Docket 30186 (sub-no.2)

Sec 4.10.1.3 Threatened and Endangered Species

The FWS should prepare the Biological Assessment during the EIS process, not after the proposed extension has been approved. Approval of an EIS without conducting a Biological Assessment is a violation of the letter and spirit of NEPA and the ESA as upheld in *Connor v. Burford* 8th Circuit Court, 1988.

Information on species of concern is inadequate. Numerous other bald eagle nests exist along the Tongue River that were not identified in the DEIS. This leads me to believe that the initial survey was haphazard and inadequate. The effects of the railroad on nesting birds is not known, neither are the long term effects from displacement. Railroad construction and operation will have far greater impacts and cannot be likened to ranch and county road operations contrary to the statement in the DEIS.

Suitable habitat for Peregrine Falcons and Black-footed Ferrat needs to be taken into consideration as reintroduction efforts for these species continue. The DEIS does not do this. Peregrine research indicates nesting falcons are distributed by human activities within one mile of the nest site. The proposed railroad would adversely affect Peregrine Falcons.

The proposed railroad would also affect Black-footed Ferrat introductions to the Northern Cheyenne grazing dog complex. The effects of a railroad on Black-footed Ferrats are not known. However, habitat preservation is crucial for the species and the proposed action would destroy viable habitat for Black-footed Ferrat.

4.10.1.1 Vegetation

No survey of threatened or endangered or species of concern plants has taken place. An extensive survey needs to be conducted for the final EIS as much of the area is in undamaged condition and the railroad would pass through crucial riparian zones.

Damage to native grasses and water quality from herbicide spraying has not been adequately addressed.

4.10.1.1 Wildlife

Sage and Sharp-tailed Grouse leks need to be identified and the impact assessed in the final EIS.

No mention is made of the white pelicans inhabiting the area around Tongue River Reservoir. Again this indicates a haphazard and incomplete wildlife inventory.

Also no inventory of reptiles and amphibians inhabiting the Tongue River and its tributaries has been done.

4.8.2 No contingency plan has been developed in the event of a diesel, coal or herbicide spills. Thus it is impossible to comment upon the adequacy of such a plan. This needs to be corrected for the final EIS. The DEIS states that a derailment is relatively rare. This is untrue as any railroad worker will tell you. Derailments are commonplace. The contingency plan and EIS need to take this into consideration.

Furthermore no mention is made of compliance with Montana State Water Quality Law which explicitly states a policy of non-degradation of water quality. It appears the proposed railroad would be in violation of this law.

4.8.1.3 Spawning grounds of fisheries in the Tongue River have not been assessed. The locations of spawning grounds needs to be located for the final EIS.

4.8.1.3 Mitigation measures to offset sedimentation impacts need to be assured, not regarded as a "possibility."

4.8.1.1 Wetlands A detailed review of wetlands needs to occur in the final EIS process in order to be in compliance with NEPA, not after the decision has been made.

There is no wetland mitigation plan in place. This needs to be corrected in the final EIS, including which areas are suitable for wetland mitigation.

The DEIS refers to Hanging Woman Creek as "extremely low or non-existent after spring runoff." This is untrue. The final EIS needs to take a closer look at Hanging Woman Creek as a viable stream and wetland habitat. Again this incorrect assessment of the physical environment indicates an inadequate DEIS.

4.12 Noise No baseline data of decibel levels has been recorded for the proposed route. Therefore it is unknown if sensitive receptors would experience a 4 decibel increase. Baseline data needs to be collected for the final EIS.

4.13 Cultural Resources No survey has been made of the cultural resources, i.e. burial sites, battle sites, lithic sites and others. An extensive survey needs to be done before impacts to these sites can be assessed. This needs to occur in the EIS process.

The proposed ROW would sever Northern Cheyenne "spirit paths" crucial to Cheyenne religious practices and restrict access to religious sites. Since most sites overlook the Tongue River, construction of the railroad would make religious practices near impossible at these sites. This would be in violation of the Native American Religious Freedom Act.

Birney Village is one of the most traditional native villages in the United States. The proposed railroad would severely change

the way of life there likely causing increases in crime, racial conflict, alcoholism, depression, alienation. This would undermine traditional values and beliefs eliminating the identity of the Northern Cheyenne and contributing to their cultural demise.

There is no contingency plan in the DEIS in the event of a petroleum, coal, or herbicide spill into the river which would affect Northern Cheyenne horses, gardens, wild medicinal and food plants growing along the river.

A.9.3.1 Wildlife Aerial Survey and Ground Reconnaissance needs to take place during EIS process not after. Prairie dog towns need to be evaluated in terms of suitable habitat for reintroduction of Black-footed Ferrets whether or not ferrets are found.

There are other bald eagles nest other than the one indicated.

The mitigation measures are inadequate with respect to Bald Eagles, Peregrine Falcons, and Black-footed Ferrets. The increased activity would effect the breeding capacity of these species. Acceptable mitigation would entail cessation of construction during breeding season. Destruction of Black-footed Ferret habitat cannot be mitigated.

As outlined in Clevert Cliffs v. Atomic Energy Commission, the range of alternatives must speak to the no action alternative. The DEIS fails to consider "no action" as a legitimate alternative.

Because numerous wildlife, noise, air and water quality, riparian and cultural impacts cannot be mitigated, I urge the ICC to choose the No Action Alternative and deny the permit for the proposed extension.

BIRNEY SCHOOL DISTRICT NO. 3

Rosebud County
BIRNEY MONTANA 59012

Telephone
City Number

Sept. 11, 1992

September 14, 1992

Finance Docket No. 30186 (Sub No 2)
Tongue River Railroad Company Construction and Operation of
Additional rail Line from Ashland to Decker in
Rosebud and Big Horn Counties Montana

TO: Dana White
Section of Energy and Environment, Rm. J214
Interstate Commerce Commission
Washington, D.C. 20423

RE: TONGUE RIVER RAILROAD - CONSTRUCTION AND OPERATION OF
ADDITIONAL RAIL LINE FROM ASHLAND TO DECKER, IN ROSEBUD
AND BIG HORN COUNTIES, MONTANA.
FINANCE DOCKET 30186 (Sub No. 2)

I own a home in Birney, Montana and to have a railroad 500 feet from my house will not only be a nuisance and inconvenience it will lower the value of the property. The noise and vibrations and most of all the fire danger, will be unbearable. Nowhere in the EIS are these kinds of problems and results addressed.

There is an existing railroad to transport the coal from Decker, so why is this permit even considered? It will benefit only coal and railroad companies. There are existing mines in Montana and Wyoming that are not up to full production, therefore, it is very doubtful any new mines would be developed along Tongue River.

Therefore, I respectfully ask you deny this permit.

The Birney Elementary School Board would like to respond to the EIS regarding the proposed rail line through our community. We feel a slowdown of any rail traffic within a mile of our school to 10 MPH is essential to the well-being of the operation of our school. The noise and vibration of any train traffic would cause interference within the classroom affecting the teachers and students.

We would also like to stress that if the proposed line were built our school, which is a two room school with two teachers serving 16 children, would be impacted by increased enrollment during the construction phase. We seriously question the ability to handle a temporary increase of enrollment. Not only do we have limited physical space but the cost of adding more teachers and supplies would cause a financial burden to the school district as our tax base would remain the same.

Sincerely,

Karen C. Stevenson

Karen C. Stevenson
Chairman, Birney School Board

Mary B Daniels

Mary B Daniels
SA Ranch
Birney, MT 59012

30 Pine Lane
Meridian, MT 59501
September 3, 1992

Dave White
Section of Energy and Environment
Room 3014
Associate Commerce Commission
Washington, D.C. 20003

RE: Proposed Tongue River Railroad - (Finance Decast No. 30136
(Sub No. 2))

Dear Mr. White:

The purpose of this letter is to comment on the proposed Tongue River Railroad (TRRR) in general and the draft environmental impact statement in particular.

As one of the 22 landowners affected, I wish to express my opposition to the proposed railroad. My opposition is based upon the following rationale:

A. **Cultural Impact** - I am a fourth generation resident of the Birney/Ashland area. As such, I was raised in Birney as came to love the unique lifestyle the valley affords. Although I left the area to join the US Army shortly after college graduation, I was always determined to return and eventually return there. Consequently, when I was afforded the opportunity to purchase my parent's small farm in 1978, I jumped at the chance. I looked forward to a peaceful and tranquil retirement on my boyhood home. That peace and tranquility will be irrevocably destroyed by a railroad that will pass within 100 feet of my house and destroy the most productive part of my farm.

B. **Land Use** - I currently own 72 acres of river bottom land and half mile south of Birney, Montana. My holdings are directly in the path of the railroad. Of this 72 acres, 53 acres are under a very sophisticated irrigation system. This irrigation system was installed at a cost of over \$21,000 or \$636 per acre. While the appearance of the land would appear to be strictly agricultural, it is in fact a retirement retreat. The 100 ton per year alfalfa hay crop was intended to supplement retirement pay. My decision to spend thousands of dollars on these improvements was not driven by economics but by location. I would never have spent that amount of money had it not been my boyhood home. The railroad right of way directly affects about seven of my most productive acres. In addition, blueprints furnished by Wesco Resources indicate that the county road will impact another eight acres. Furthermore, these changes will intersect my buried irrigation pipeline rendering the entire line

Each valve and check device is in fact a mechanical system. Furthermore, the worst case analysis of only 70 impacted irrigated acres on the grassy side is laughable. My farm contains 13 prime irrigated acres which are impacted. Fifteen prime irrigated acres are covered by right of way or county road realignment. The remaining 13 will be severely degraded because the pipeline would sever them when they are intersected. Furthermore, relocation of the irrigated portion of the farm from 15 to 19 acres makes the farm impractical to operate.

C. **pg 4-1 - Displacement of Capital**
Again, this paragraph makes a false statement when it states that no mechanical irrigation systems are impacted. As discussed above, at least one substantial capital improvement has been missed by the preparers of the EIS.

D. **pg 4-3 - Effect on Agricultural Productivity**
The assumption of an overall value for agricultural land of \$162 per acre is not credible. Those numbers are taken from 1987 data during the bottom of the Montana agricultural depression. Since that time, the market for ranch land has strengthened considerably. Furthermore, the data is skewed by the inclusion of very large parcels with little irrigated acreage. The 1313 acres taken out of production directly by right of way is only a small part of the loss of productivity. When county road realignments, loss of capital improvements and the effects of severance are considered, the losses are many times the \$222,912 cited in the EIS.

E. **pg 4-5 - Impacts to Other Land Uses**
While the primary use of my property would appear to be agricultural, it is fully as much recreational as agricultural. I enjoy hunting and fishing and, from time to time, have derived income from letting other sportsmen use the property. Furthermore, it has been a source of indirect revenue to me in that I have used the property to entertain certain clients of my brokerage business. The income derived from these clients has produced income to me many times more than the hay sales generated by the agricultural production. As previously stated, I have always intended the property to be a retirement estate. The existence of the railroad would destroy these non-agricultural uses. The EIS totally ignored any land use other than agricultural in the estimate of value loss. This incorrect assumption makes the entire EIS laughable.

The draft EIS as issued is totally inaccurate, biased and obviously designed to comply with environmental, social and cultural impacts in the Tongue River Valley. My small farm is only one of the many ranches and farms affected by the railroad. As amply demonstrated above, there are glaring errors, omissions and outright misstatements of fact in the draft EIS on the small portion of the railroad which crosses my property. If the EIS is as far off the mark for other property owners as they are on mine, then the entire EIS is bogus.

unusable. The net result is the direct loss of 15 acres of prime irrigated land and the indirect loss of another 13 acres. The statement in the Environmental Impact Statement (EIS) that no prime agricultural property will be affected is clearly incorrect. Furthermore, existence of the railroad clearly makes the entire property untenable for its primary purpose - a retirement retreat.

C. **EIS Inaccuracies**

1. Page 200, Table A-1 (Summary Impact Table)

a. Land use. Lists total irrigated acres affected under the four main alternative as only 26 acres. I can demonstrate that 13 irrigated acres will be lost on my property alone. The EIS is misleading in that it only counts acres lost to the 100 foot right of way. It does not count acres lost due to the relocation of the county roads on irrigated land. I contend that this draft EIS was done with 1985 data and includes no improvements since then.

b. Additional land lost (acres). This section lists additional land lost due to irrigation impact on the entire line as only 20 acres. Again, I can demonstrate that an additional 13 irrigated acres will be lost on my farm alone due to the pipeline severance. This is not included in the EIS.

c. Affected landowners. This section apparently lumps me in with the agricultural land owners since the only landowner not listed as purely agricultural is Corcoran Estates. In fact, I should be included as a retirement estate rather than purely agricultural. I was never interviewed by the EIS preparer to determine my intentions for my property.

d. Existing improvements affected. This section is extremely misleading in that it fails to count as improvements thousands of dollars in buried pipeline on my property. Furthermore, it fails to count the two houses on my property as affected. While they will not be in the right of way, they will be uninhabitable due to noise and pollution effects. The two houses are very close to 70-dBA contour of which this EIS says there are none.

1. Paragraph 4.1.1.1 (Construction Right of Way)

a. pg 4-2 - Acquisition. This paragraph contains a serious misstatement of fact when it says only 1.93 acres of prime farmland would be affected. As demonstrated above, 13 acres will be directly affected and another 13 indirectly affected by this action on my farm alone.

b. pg 4-2 - Severance. This paragraph makes several false statements. It alleges that no irrigated cropland with mechanical systems is affected. I contend that a \$21,000 buried pipeline, complete with sophisticated alfalfa risers,

I urge that the draft EIS be found invalid and the "NO BUILD" alternative be adopted.

Respectfully submitted,


Forest D. Dunham
2002 Pine - 307-672-2414
Home Phone - 307-674-7351
Farm Phone - 405-324-9200

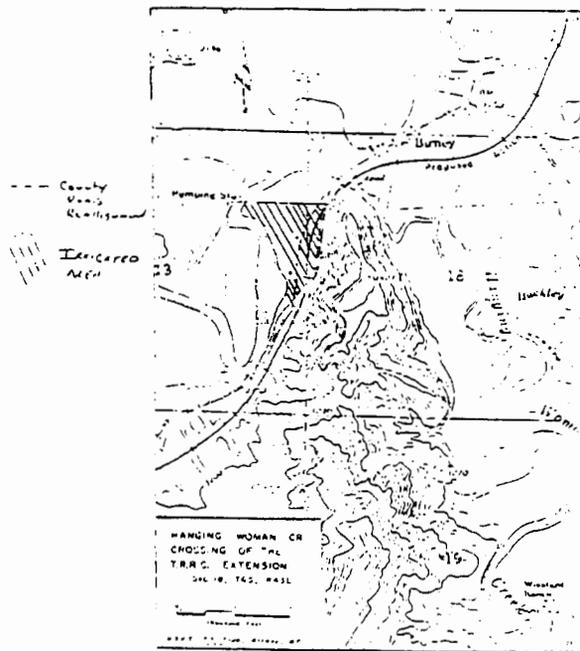


Figure 10 - Tongue River Crossing of the T.R.R.C. Extension

Statement on the Draft Environmental Impact Statement on The Proposed Tongue River Railroad and its Extension from Ashland to Decker, MONTANA.

Bruce Delaney
4 Mile Ranch
Decker, MT 57025

My name is Bruce Delaney, and I manage the family ranch, owned by my mother, Ellen Cotton. Our ranch is located on 4 Mile Creek of the Tongue River drainage, which is on the alternative route of the proposed extension of the Tongue River Railroad.

We are totally opposed to the permitting and/or construction of the so called "Tongue River Railroad". We believe it will permanently damage the socio-economic-cultural structure of Eastern Montana.

The costs to ranchers in terms of adjusting to a railroad running thru their property is immeasurable. In addition to the obvious: need installation; higher fire danger, with harder access to fight fires; division and/or destruction of hay meadows in a country which depends for survival on all the hay base

it can utilize; the separation of range and pasture from waterholes, springs, and wells; — there is the aesthetic to be considered. Air quality, noise pollution, vibration pollution, accidental derailments and spills, destruction of wildlife and their habitat. We have already seen the quality of our air degrade a frightening amount in the last 20 years. It's scary, and it's sickening. We attempt to be good stewards of the land as we make our living from feeding the population. Many of us, consciously or unconsciously have borrowed from and subscribe to parts of the belief systems of our neighboring Indian tribes. Basically, we people in this part of the country are good citizens who would sacrifice much when there is a real need to do so. In the case of this "railroad", most of us are convinced it is primarily a speculative scheme to enrich a few outsiders at the expense of those who have lived, struggled and survived here for generations.

I think what personally bothers me the most is that the ultimate decision will be in the hands of political appointees and campaign contributors who probably never have, or will, set

foot in this country, who can't, and don't particularly want to, appreciate our lifestyles and our deep and time committed to this country we live in, Eastern Montana, and to our mother country, the USA.

If this government and its agencies are willing to bully and sacrifice us, — who are part of the real backbone of this nation, for no true good reason, except short term gain for a wealthy few, sooner or later we will be tempted to feel the same way back towards them, and that would be a real tragedy. That essentially undermines what gives us the potential to be as great and as strong as we can as a nation. Our people have the potential to be far less provincial, parochial and self-absorbed than our leadership would give us credit for.

Montana's sometimes like to think of our state as "The Last Good Place". It is not the only one, and sometimes doesn't live up to its billing. But it should not be re-ordered and dismantled, unless there is truly an overpowering reason to do so, and even then, not without the consent of the governed.

Bruce Delaney 4 Mile Ranch Decker, MT 10/12/11

Four Mile Ranch
Ductor, MT 59025
October 18, 1992

Lauren Emerson Dandee
377 Clifton Cove
Stockport, MT 59488
Oct. 17, 1992

Dane White
Section of Energy and Environment, Room 3214
Interstate Commerce Commission
Washington, D.C. 20423

Dane White
Section of Energy and Environment, Room 3214
Interstate Commerce Commission
Washington, D.C. 20423

Re Reference To: Finance Docket 30186 (Sub No. 2)

Re Re: Finance Docket 30186 (Sub. No. 2)

Dear Members of the Interstate Commerce Commission:

Dear ICC members:

Having lived and worked in the Ductor-Silverton country for forty years, I am totally against the building of a railroad from Ashland to Ductor along the Tongue River valley, through some of the best livestock and grazing land in the area.

As a Montana resident, I find the Draft Environmental Impact Statement for the Tongue River Railroad proposal from Ashland to Ductor is seriously flawed. It ignores many of the negative impacts of the proposed railroad, underestimates the costs of both the alternative routes, and fails to exhibit the "public convenience and necessity" on which all such projects must be based.

The railroad would be a very expensive and impractical project, for which there is no need.

A small town is temporary construction jobs and a slight decrease in railroad mileage for eastbound coal do not balance the long-term loss of prime agricultural land, loss of local railroad and mining jobs, long-term loss to local businesses, destruction of Northern Cheyenne sacred lands, and loss of coal tax revenues which are the main support of our schools.

Sincerely,

Eileen Cotton
Owner, Four Mile Ranch

The Draft EIS is completely inadequate in addressing the long-term effects of this proposed project.

Sincerely yours,

Lauren Emerson Dandee

My comments on Tongue Rail plan
There does not need to be a "preferred route" and none should be approved, as it is not a necessity to ship the coal through Eastern Montana. The coal is being shipped on an existing rail road that is doing a good job of transporting the coal and other freight to keep the rail road in operation, to benefit the area farmers and ranchers and the towns of Ashland and Silverton. With out the coal freight, this rail road, will in all probability have to close down, putting hundreds of people out of work, and denying the farmers transportation of their grain and other products to market.
My understanding of this speculative venture is an investment by some uninvolved group of investors, in the hope of getting some large foreign corporation interested in buying the rail road, once granted and finished, to also buy coal from Wyoming, to have a transportation route through Montana and thus by passing Montana already available coal. This is not a necessary venture and will not benefit Montana in any way.

The area where the rail road is supposed to go through is strictly livestock country. Beautiful and pristine. Very rough, so there would have to be great movements of soil and disruptions to the hills and in many places tunnels through the mountains, turning. Dividing ranches and separating pastures from water by the rail road, plus the great expense of paving and the expenses.

This request for additional trackage ~~will~~ be granted, as it is not a priority for anyone except some uninvolved investors who plan to make a killing, by destroying the land and ranch land of a group of people who have called it their home for generations and have used it to make their hard earned living. We need to be heard and I say, lets not grant this request.
Dorothy Schultz

DOROTHY J. SCHULTZ
P.O. BOX 1049
ASHLAND MONT 59021

QUARTER CIRCLE U RANCH
Birney, Montana 59012
(406) 95-4290

August 31, 1992

Interstate Commerce Commission
Section of Energy & Environment
Room 3214
Washington, D.C. 20423

Dear Dana White:

My name is Clifford L. Locke and I live at 289 Nth. 7th. Ave.,
Forsyth Mt.

I am writing in response to the Tongue River Railroad application
for the 42 additional mile extension from Ashland to Decker Mt.

When the original 89 miles was granted for a rail line from Miles
City, Montana to the proposed site of the Montco Mine it seemed
that it would be good for the area in general.

A new mine opening up would bring prosperity to an economically
depressed area. Judge Cross wanted to add one stipulation, that
construction must start within one year.

As of this date not one shovel full of dirt has been turned
at the mine site or for the proposed rail line. Mr. Gustason has
pulled the wool over everyone's eyes.

Now after extensive hearings we find his avowed intention is to
drive a line from Miles City to Decker Mt., Not a line to a mine
site but from one railroad to another.

Please. Please take into consideration the need and necessity of
this line, and you will come to the conclusion as I have that this
is not needed. It will directly effect the lives of many people
living and already working in southeastern Montana. I work for the
Burlington Northern Railroad as a trainman.

I stand to lose not only my job, but my house, and all the equity
I have accrued in it. The application should be thrown out after
due consideration. BN handles the coal traffic in a fast and efficient
manner. This does not add jobs, but it is jobs away from railroad
people. Business, Mining and ultimately allow condemnation of ranch
and pristine farm land.

Please vote no on this ruinous proposal.

Most respectfully

Clifford L. Locke

Clifford L. Locke

R. R. Martinek
Secretary
Forsyth, Montana

October 20, 1992

Interstate Commerce Commission
12th & Constitution Avenue N.W.
Washington, D.C. 20423

RE: Tongue River Railroad Co.
Rail Construction & Operation
Ashland to Decker, Montana
Finance Docket No. 30186 (SUB-NO. 2)

Dear Sirs:

Many factors have been brought out in the hearings held in this
area revealing the tremendous impact that will be thrust upon the
environment if the Tongue River Railroad is permitted to extend its
proposed line to Decker, Montana. However, the human factor has not
been discussed.

To date, the rail line is pure speculation in so far as it was to
have been built from Miles City to Ashland to transport the coal that
was to be mined there. The emotions and way of life of the families
that have lived in this area many years will be greatly disturbed and
disrupted through unemployment and loss of property. Life, liberty and
the pursuit of happiness is guaranteed to us under the Constitution.
It is not the duty of the Government to take away the livelihood of
many to enrich the pockets of a few speculators. The lives of the
inhabitants now existing in this area are real. The proposed railroad
and its extension are but a figment of imagination and not a matter of
necessity.

Sincerely,

Robert R. Martinek

Robert R. Martinek
148 No. 9th Avenue
Forsyth, MT 59327-0105

RRW/dt

October 15, 1992

Dana White
Section of Energy and Environment, Am 3214
Interstate Commerce Commission
Washington, DC 20423

FINANCE DOCKET NO. 30186 (SUB-NO. 2)
TONGUE RIVER RAILROAD COMPANY - CONSTRUCTION AND OPERATION OF
ADDITIONAL RAIL LINE FROM ASHLAND TO DECKER, IN ROSEBUD AND
BIG HORN COUNTIES, MT

Dear Sir,

The Quarter Circle U Ranch lies about two miles south of Birney
along the Tongue River.

We are opposed to the Tongue River railroad because it will have
an adverse effect on our ranching operation. We would like to have
the following questions answered to insure that our ranch can be
run as efficiently as it has for the past 110 years.

Every spring we move our 500 head of yearling cattle across
the area that the tracks will be built. The task isn't easy with
things the way they are now and we see great difficulties when
trains are passing. Will we be assured wide enough underpasses and
if that does not work will we be compensated for hauling costs, loss
of cattle, etc.?

In the next pasture our horses must cross the roadway to water.
If the railroad cuts off their route a new well will need to be
provided by the TRR Co. One of our spring calving pastures will
also be cut off from its main water source by the railroad. This
means that two more wells will have to be drilled.

More underpasses are needed than proposed, also fences and gates.
These underpasses and fences should be built concurrently with rail
construction so as to minimize disruption of our ranch operation.

Can we be guaranteed that the railroad will control any seed
problems that will occur because of its construction and operation?
Who is responsible? Who is responsible? How will dust be
controlled during construction? If water is to be used for dust
control and construction where will it be obtained?

Sincerely,

Timothy C. Lohof
Timothy C. Lohof

WALLACE D. McRAE
ROCKER SIX CATTLE CO.
P.O. BOX 2095
FORSYTH, MONTANA 59327

17 October 1992

Dana White
Section of Energy and Environment
Room 3214
Interstate Commerce Commission
Washington, D.C. 20423

RE: Draft Environmental Impact Statement, Docket No. 30186 (Sub-No. 2), Tongue River Railroad

Dear Dana White:

I am President of Rocker Six Cattle Co., a Montana corporation that is engaged in freetrack production on
Rosebud County, Montana. Our family ranch is slated to be crossed by the already approved 89 mile
portion of the Tongue River Railroad (TRR).

Let me begin by stating my interpretation of the purpose of an EIS as required by the National
Environmental Policy Act (NEPA). An EIS is written to represent the public interest in a project
affecting the environment. As such, an EIS should be designed to be: 1. Factual, 2. Comprehensive and
3. either unbiased or tending to lean towards a negative view of the proposed action. Of the many EIS's
that I have reviewed this is by far the worst at all three categories.

If an EIS merely presents a dry, pro-development picture it ought as well be glossy, four-color,
illustrated public relations brochure. The (lacking the colored illustrations) is what the draft EIS of the
TRR's proposed action represents for the most part. In only two instances is there any effort made to
address the impacts of the proposed railroad. Because of the lessons learned when the Navajo American
in this case the Montrose Charismatic were ignored in a Federal coal contract process addressing the
impact on the Montrose Charismatic in fairly comprehensive. I was also surprised that the Four Mile
Alternative was addressed because usually any alternative other than the proponent's preferred one is
either ignored or given more lip service before dismissing it. The ICC is to be commended for these
actions.

I believe that the pro-development bias of EIS's has gotten progressively worse since the passage of
NEPA. Why is that? Let's look at how, and by whom, EIS's are written. An unbiased developer (in this
case the TRR Co.) wishes to become involved in an activity that falls under NEPA. Since they want their
project to be approved, they engage a pro-development firm (in this case HRA) to write a draft
document. Now neither the developer firm or the credit writing the DEIS are satisfied by itself. The
developer and the DEIS writing firm try to stick to the same pro-development document, possible for
obvious reasons. With analysis is not obvious why the "impartial third party" document writing firm
does not observe, but the manner of unbiased EIS writing firms to commonly developing because so one is
going to live them. So a "neutral" firm usually learns how to play the game and get those EIS writing
contracts. The worst reason that the quality of the EIS contracts to be degraded is because none of the
firms do any field research. The documents written as in their offices researching and representative
opinions and "DEIS" that also had no basis in field research but come from either pro-development
documents. If any literature search turns up a lot of information that might not be completely favorable
no matter how appropriate or important a single bit, it will be ignored. Why for instance was Dr. Ray

Gold's in-depth sociological investigation of Routledge County and especially the processing to the Blenny Community ignored?

Perhaps the HRA is just not qualified to prepare a comprehensive, factual and unbiased document. Maybe they don't have people that are qualified to analyze the detrimental effects of the TRR on the environment and the economic viability of ranches, mines and communities that will be impacted if the railroad is permitted, constructed and operated.

One thing that HRA is qualified to address, however, is the history of efforts to build a railroad in Tongue River Valley (after all HRA's first name is Historical). Why didn't HRA examine why the North South Railroad that built miles of grade in the 1920's died with no trace save the remaining grade that is to this day a problem for some of the arroyos in the valley? Why didn't HRA give an accounting of the efforts of the Hartigan-Henderson to acquire a permit and construct a railroad on Tongue River in 1966 and 1967? It might be interesting and germane to the questions of viability and economic feasibility for the proposed railroad to find out why the BH abandoned their efforts to build a "Tongue River Railroad." Perhaps HRA should also give a history of all of the financial players that were in one time associated with financing the TRR but are no longer part of the financial picture. Why did they bail out? What is the past and present relationship between the TRR and the BHT? Surely HRA could do a document search in this question.

I will attempt to address some errors and inadequacies in the DEIS but the most glaring problem remains, as stated above, the obvious pro-development bias of the document. That bias runs throughout as to the adequacy of the EIS under NEPA within the intent and completeness of the final document is much changed from the Draft.

p-1-1 The "current coal market" is being put by calling "intermittent." If that is not the case and there is a lack of transportation facilities to handle the present (and greatly increased) coal market places document.

p-1-1 Where is the documentation for the market for the Monroe Mine (which has never been developed) or for the "proposed mines in the Coal Mountain and Deer Creek area." The annual traffic from these mines could total 2 to 18 million tons of coal by the year 2010. It is purely speculative especially since there have been no mining permits even requested for any mines other than Monroe and it is yet to secure a contract for any coal.

p-1-6 Routledge County does not have a "county planning commission" or county planning board.

p-1-7 If the current projections are as flawed as the 1985 scenario was (from 13 to 17 million tons per year) the projections are without value and the future progress of the land for the TRR is suspect and based on unsubstantiated speculation.

1-7 Construction of the Monroe Mine and "Other Ashland mines" is speculative and without basis in fact.

p-1-9 Where is the documentation for the speculation that "coal traffic from the Ashland area mines would increase from eight million tons in the year 2000 to 18 million tons by the end of the analysis period."

What is the name or location of "The final mine" that is mentioned in paragraph 22.

The draft paragraph states that the 1985 coal projections were without basis in fact. We are to believe that the current projections are credible? The projections are just as speculative, and therefore suspect, as they were in 1985...and we know they were based on hope or hype.

none at the way of the road area in order not to allow water quality standards, or preclude the re-establishment of vegetation on the related spot. The drainage basin at Spring Creek, as Decker and the lands in the Gillette. If riparian areas are strictly more economical means to operate on a cost per ton, or a cost per FTU basis. The DEIS neither does consider in order that the Monroe Mine will be developed, intend, in all respects in the whole question of the TRR, and its purpose and economic viability, reflect the overwhining economic problems that the Monroe Mine (and other mines in the Ashland area) have in competing with the existing mines. Especially those in the Gillette area where there is a compliance cost, a very high operating cost, no water conservation problems, a comprehensive mine governmental and mine that were equipped when their machinery was less costly than it is today's market.

No knowledgeable person that I know in the coal business believes that the Monroe Mine will ever be built. If the economic viability of the Monroe Mine is in question, what does that do to the question of coal for the railroad. If the Monroe Mine is a dead mine then why are the resources in the TRR and looking for a permit? That's the question that the EIS should be addressing? Is the TRR really being proposed to serve the needs in the Decker area? Or is its purpose to haul Gillette coal. If that is the case why are we considering permitting a railroad to serve mines already served by rail transportation? Is it a yet to come mine in the Gillette area? What does this mean to the railroad already serving the Gillette area?

Although the language is a bit difficult to follow I believe that the second paragraph under sec. 3.5 on page 3-16 is significant. Perhaps "To the extent that there may be fewer new mines in the Ashland/Blenny area during the analysis period (2010), the cumulative impacts from mining may be less than those reported in the 1985 TRR EIS." It is an admission that there may be less mines developed in the Ashland/Blenny area!

p-4-7 The DEIS is misleading in the amount of acquisition required. Although the 89 mile portion has been permitted I am not aware of one acre (other than on the L-shaped Epperson Station) that has been acquired. The TRR has been sitting on its patent but has not been acquiring land for its ROW. So if we are going to truly examine impacts they verify the final EIS should address the cumulative impacts of the TRR including the original 89 miles and the currently proposed 45 mile "extension." There are several reasons for this. The situation has changed in many ways since what was the case in the 1985 EIS. There has been a substantial increase in the private dog population on the Tongue River valley since the earlier document was written. The problem population has also increased. There are more cattle, less and coyotes. Could there be black footed ferrets in the large areas on the Northern Cheyenne Reservation, or the private dog lands between Box and Cooper Creek and Homestead Down? One of my neighbors built a canal where the proposed ROW is shown indicating that the TRR was never going to be built. Routledge County was forced to relocate a road in Sec. 16, T15S-R4E which will either require the TRR ROW or be moved to the ROW will have to cross the Tongue River Road near within a mile, or the County will be required to relocate a road and a road and connect bridge from the crossing of Box and Cooper Creek. The original EIS assumed that Calhoun would be the last for much of the connection because I doubt if that is still valid.

Under "Services" I agree with the statement: "Services as defined in the railroad ROW reviewing a complete land parcel in such a manner as to render the parcel available for continued conveyance." I do not agree with the statement (or the intention) that: "Uninterrupted grazing land, where cattle pastures can be established to allow the uninterrupted operation of cattle between pastures is not considered to be served." For all practical purposes all grazing lands bounded by a railroad ROW are severed because you do not have "uninterrupted movement of cattle." Some cattle will not be a cattle past. Most cattle will have to use a cattle past. Most cattle will not go through a cattle past. The design of a cattle past is important to its successful use by livestock. The construction of a cattle past is important. (Cattle are not inclined to enter a stock pens if the gate is in their eyes.) So called a gate or cattle sawe a stock pen. Cattle are because of either a decrease of carry weight facility. Size (length, width and height) are all a factor in cattle using a stock pen. The shorter, and the wider and higher the better. A bridge across such better than a "hole" or "chute." Drainage is important. Facilities to move water and livestock

p-1-9 (cont.) In paragraph 4 we read that the current projections (reported in TRR's best traffic conditions) "approximates the 1985 EIS modified coal production scenario." It appears as long as the TRR is grinding for members that they are going to stick with the same ones that have already been proven wrong.

p-2-2 What is the basis for the statement, "about 90 percent of the agricultural land in the Tongue River valley is used for cattle grazing; about 7 percent is used as cropland; and less than 3 percent is irrigated cropland." Either that statement is in error or the definition of the "valley" is different than mine. I would consider that some of the valley is irrigated and that there is some irrigated land that crop land (dry land)?

p-2-3 Why is there no mention of the Ashland Mine in Big Horn County? Is it because the TRR is a threat to its remaining viable and the source of its closing endangers the very economic projections of the EIS?

It is unbelievable that for a "discussion of ranching operations" we were refer to "the 1985 TRR EIS." How many of the affected landowners have one of those things on their kitchen table? It is as likely that the most affected group of people that run a discussion of ranching operations and contribute to the region's overall economic picture. Surely the importance of livestock production is greater than the four lines devoted to it under section 2.2.2 Land Use.

p-2-3 I know of no water quality research that the Yellowstone-Tongue Area-wide Planning Organization sponsored. There have been numerous studies of water quality of the area, however. Most have concluded that there is a wide range of water quality and some that I am aware of have treated all waters into the same category. I would expect a better source of a description of water quality in Tongue River than a "Planning Organization." Why must we refer to the 1985 TRR EIS for something as important as water quality?

Under vegetation (2.2.3.1) I'm sorry, I thought I knew something about grasses since my livelihood depends upon grasses and water, but I have never heard of the grass species called "red-grasses with some disintegrants." The whole Vegetation section is misleading and indicates that there have been no on-site vegetation studies conducted.

p-2-7 --2-10 It is obvious that no field to on-site wildlife studies have been conducted. Of course (to be sure) grasses growing on fields (including areas) are known to occur immediately on the right-of-way. This only means that on any of these grasses has been conducted, not that there are no such sites on the right-of-way. What does the statement about bird sightings along Tongue River (an area to 300 and being indicative of "natural sites.") Has there been any follow up to the reports before spring in 1979? It's like the grass birds, just because there have been no field studies doesn't mean a species is not present.

p-2-28 Has there been a cultural resource survey conducted? On the original 89 mile portion I submitted a list of cultural sites of which I am aware as my area but follow up was done.

p-3-16 The DEIS continues to indicate that the Monroe Mine and several other mines in the Ashland area will be constructed. The TRR contends that if the proposed extension is denied that the original 89 mile portion will be built to serve these mines. Let's look at the facts. The Monroe Mine, as permitted by the Montana Department of State Lands is different than any other mines in the Powder River Basin of Montana and Wyoming. Because of the highly acidic nature of the overburden in the Monroe site, a normal drainage system could not be approved. The mine's waste exposure track and above-mine water was required to keep the toxic overburden away from the groundwater at the bottom, and the plan room

both that do a very good job of moving the water. All of these factors are important in designing a stock pen. The best stock pens are usually the most expensive, however, but the more maintenance or more stock-pen stock pens do not mean that there will not be severe vegetation problems with grazing livestock. What is the movement rate brought for a stock pen. How tall is a horse? How tall is a horse with a water inside. How far does the ground does a person's head get on a tall looking horse. Do you get the idea?

p-4-5 The "Effect on Agricultural Productivity" is substantially wrong, or terribly sloppy as every property owner impacted by the TRR. The opening of the price of land with agricultural productivity is foolish. Just because there is a relationship between productivity and land value, to cause them to be directly proportional. There is also an assumption here that land is going to be acquired for \$125 per acre. I don't know much about other costs, but if that is an indication of expected costs the owners in the railroad area as for a mile stock. We have never seen any willing sellers. The increased cost as to distribution, damage, death loss, labor, development costs will all exceed the \$62 per acre per year. The more the more expensive it will be for the landowners. Nowhere in the DEIS can I find an analysis of the decrease in, and volume that the construction and operation of the TRR will cause for impacted ranches. Why was this crucial negative economic impact ignored? Where is there an analysis of the increased operating costs for ranchers if the railroad is built? Does the TRR assume the responsibility for maintenance of all associated facilities such as fences, castles, culverts, water pipes etc.? If the TRR assumes the responsibility for the maintenance of these facilities, what is the expected response time to repair facilities? Will the ROW be permitted as a regular basis by maintenance crews, or will the TRR rely on ranchers to report broken fences, drilled or cattle guards, plugged culverts etc.? The DEIS and all of the related correspondence from the TRR indicate that many of the details of maintaining facilities will be left to "agreements" between the TRR and affected landowners. The DEIS fails to indicate the difficulty that ranchers will experience in getting fair compensation and conditions when they are forced to "agree" under threat of condemnation. Is there any reason to believe that the TRR will be sympathetic or reasonable in acknowledging the negative impacts of the railroad on ranches? What if a rancher "agrees" to a wrong way, they focus along the ROW on his operations: what effect will this have on wildlife (especially sensitive) species?

It seems to me that some assessment standards for fencing, crossings (both livestock and vehicular), cattle guards (on intersecting fences), fire suppression and prevention, arrangements of disturbed lands, and preservation and control of sensitive wildlife must be developed and analyzed in the final EIS. If all of these important concerns are left to agreements between the landowner and the TRR there is going to be a different set of ground rules (and aspects) on each track on the 150 mile route that is a responsible project. Will the TRR be required to have a standing order, or impact, land to compensate for railroad caused damages? Will there be some sort of mechanism set up to suppress damages or will each claim a liability be judged by the TRR? Is there a way to avoid extensive and expensive litigation by having a damage fund to allow prior at the beginning of construction? I have a neighbor who runs cattle along the Powder River area. He has had a difficult time getting compensated for cattle killed, maimed and injured by trains. One of the difficulty in getting claims paid by the BN, he had had to involve Powder River County and some litigation was required for reimbursement. Ranchers and other employees have told me that existing claims made of the railroad caused fires (the most common type of man-caused fires in Montana according to the Billings Gazette). The more 150 mile TRR is downed and smaller safety areas where the ROW is located between a river and irrigated lands along the river, the TRR is disrupted as run through irrigated land which is disrupted has programs but is more prone to burn, and because of the fire and responsibility, there constructive for a fast-responding fire. I am a deputy county fire marshal. Routledge County does an outstanding job covering camp fires. The best tool we have in containing and controlling camp fires is a quick response. The county has scattered pastures in various ranches around the county in order to get a quick response. A railroad up Tongue River will not only create fire but unless there are (several) crossings will create problems in response to fires to contain them. Shouldn't there be consideration given to installing several at-grade crossings per mile for fire access?

Who will build and maintain "holding pens" at cattle points if they are requested by landowners?

p-4-6 How can the lower pen be evaluated unless their location is known? What are the details of, and predicted success of, "reclamation"? Is the "reclamation" in priority placed and concerned the lands away to "improvement" longer than "only during the time of construction." Will special be agreed and accepted? What special will be added to an alternative to reclamation? Will there be both water and coal storage pens in the area? At what time of year will the reclamation be done? If both water and coal storage pens are used will there be different times of building? What resources will be taken to insure a word for word estimate? Will the "reclamation" area be different? If so, how will that be done? Where will the water come from if long-term reclamation lands are needed or available reclamation?

p-4-7 Is it more obligatory that a "fire response and suppression plan" should be part of the EIS. If the TRRC agrees to prepare such a plan with TRRC's responsibilities be clearly defined, or will there be a bunch of qualifying "words" and "shoulds" in the plan? Will there be any opportunity for public comment on the fire plan? Has each county fire overlaid or each county commission been advised to help prepare a "fire response and suppression plan"? What is meant by "reclamation control" along the ROW? How many "fire control units" will there be? Where will they be located? Will they be on call 24-hours every day? Will the fire control unit personnel have fire control training? Will the fire control units have radio equipment so that they can communicate with county, state, USFS, BIA and BLM fire control units?

The DEIS overstates a "weed control program" that TRRC has agreed to develop? Will there be a weed prevention program, as well? The same set of questions about the "weed control program" that I covered in the "fire response program" above need to be answered. I believe that it is inadequate in preventing weeds by merely "cleaning" the habitat. How will the habitat be "cleaned"? Where will the habitat be "cleaned"? What is meant by the term "mechanical control" of weeds? Burning? Mowing? Cutting?

How? The answer "This should look the possibility of introduction of unwanted weeds in the area." is unconvincing. Of course the TRRC should limit the introduction of weeds! The question is, Will the TRRC disseminate the possibility of the introduction of weeds? This should be the goal of the weed control program! We need to see and review the weed program. Why was it not included in the DEIS? Was it only included because "landowners expressed concern about weeds." Why did the ICC or the TRRC not take the responsibility to strengthen the potential for a weed infestation?

I agree that the TRRC has placed itself in a reactive mode concerning the verminous problem of weevils. The DEIS indicates that no preventative measures will be taken but that there will be an attempt to address "weevil problems that arise and to find solutions to the problems." Some pest ranchers have very intensive "infestations" of the weevils "problem" but it would be unfortunate if a "case" was used instead of a preventative measure. Is the TRRC prepared to try to prevent weevils? What will be the extent of these efforts?

p-4-8 The easements proposed to Item 2 are speculative. The easements that four miles will be opened to the Ashland area has no basis in fact. Considering the easements of opening a new route in the Ashland area the likelihood of any changes in the Ashland area is the favorable future seems unlikely.

Where are the figures to support the statement on p-4-9 that "All four (which four are we talking about?) Mountain counties would receive positive fiscal benefits from the construction and operation of the railroad." Where is the documentation to support "The fiscal impact of the railroad population growth would (sic) offset by the revenues that the county generates." Where would the "revenues" go and what means would have the county? Would we be "putting in" and "taking out" of the same pocket?

p-4-9 Has the land for the "construction easements" been developed? leased? purchased? condemned? Where will the water for the "construction easements" come from? Is there agreement to affect or where? Who will provide the power for the work camps...oh, excuse me...the "construction easements"? Have

There has been a cloud on the title of portions of our ranch since the TRRC was granted a permit to construct the 89 mile extension, 4 years ago. I have no idea of the time and money that I have spent defending our family ranch from the threat of a railroad crossing it, but both have been considerable. I have spent hours on the telephone, on the road and reading material that has accumulated over the years. My wife and I have had meetings at our home with various railroad officials. I have been to court with a criminal trespass charge that I filed against one of the commissioners of the TRRC. All of this has been costly in time and money. I have done this because I feel that the TRRC will cost us even more time and money if it is constructed and operated. Surely there should be some acknowledgment to the EIS of the socio-economic impacts that we ranchers have already suffered and that will only be increased and compounded if the railroad is built. Our job is tough enough without having to live under the threat of condemnation for a bunch of cow boys that have no appreciation for what we do, or what we need for. The proposals of this railroad have nothing to do with us, they are pushing their agenda through. We have ranches to run and, maybe we are foolish, but we expect the ICC to at least give us a level playing field on which to fight this threat to our livelihoods and our way of life.

Finally, what happens when it's over? What will the land be like? Every EIS I have ever read only addresses the boom cycle of the proposed activity; never the bust. How long will the TRRC be in operation if it is permitted and built.

The mitigation plans listed in Appendix A are all subject to "negotiation." I have no faith in the officials of the TRRC negotiating in good faith. There are a lot of nice sounding words but there are no such as these words and my experience with the officials of the TRRC lead me to believe that they are without integrity and without honor. I just hope that the ICC will not be so victimized by the TRRC.

Walter J. ...

application for sewage treatment facilities have made? Have the applications been approved? If so, by what agencies? What will happen to the work camps in the end of construction? Is there any plan for recreational facilities at the work camps? Will construction employees be allowed to have firearms in the camps? Has any consideration been given to the effect of increased pressure for hunting access due to the influx of construction personnel? It appears from the DEIS that the demand for increased social, educational, law enforcement, fire, health etc. services will be paid for primarily from Coal Severance taxes. Is there any assurance that the Coal Board will continue to pass money into the area in light of the severe fiscal problems at the state level? Why is there no analysis of the possibility of the Coal Tax Impact Funds drying up by a nail to help the state general fund. Is there any assurance that if the export mines at Colstrip and Sargy lose contracts because of the competition from Gillette due to the TRR that there will be enough tax dollars generated to solve the impacts to Montana when the mining shifts to the Powder River Basin of Wyoming? The DEIS is extremely negligent in ignoring the possibility that the construction of the TRR may enhance increased coal production in the Gillette area at the expense of closing mines in Montana. This possibility should be examined in depth or the entire EIS is severely flawed.

p-4-29 The two cables (4-16 and 4-17) have no basis in fact and are merely speculative. If they are to be given any credence then the decreasing production at Roundtop, Big Sky and the Big Horn County, which is not included, Alameda must be reduced which I don't believe was done.

p-4-43 sec. 4.7.1.4 The only reason that there have been no sales of solar solar identified on the county response, including the Four Mile Alternative, may be because there have been no solar surveys conducted. Is this the case? If not, surveys have been conducted and no sales or solar solar were found the surveys are faulty. Is this the case?

p-4-43 XXXI a field search for threatened or endangered species be conducted on the CROSSROADS? (To the best of my knowledge there has never been any surveys on the original 89 miles other than engineering surveys.)

XXXI a revegetation plan be prepared prior to disturbance? Will there be an opportunity for public input to the plan?

p-4-44 What non-native plants will be utilized for more crops or to enhance soil stability, if needed? Will they reproduce or will they be sterile hybrids?

p-4-41 The DEIS mentions the killing of deer and antelope in section 4.10.2.2 by vehicular traffic on roads, by poaching and by legal hunting but does not address the impacts of these animals being killed by events on a quantitative basis. Are there studies that could predict annual loss of big game (deer and antelope) due to these kills?

I have not found any mention of domestic livestock being killed or injured by trains, but believe that this issue should be addressed and that a schedule of fair compensation should be spelled out when the happens.

p-5-1 section 5.2 There is an omission of the long-term economic impacts to the ranches along the TRR. Every ranch crossed by the railroad will see increased operating costs, and a reduction in gross and net income as well. The amount of the costs and reductions will vary and must be estimated on a ranch by ranch basis. The presence of a railroad on a ranch decreases the value of the CROSSROADS. These economic impacts should be documented by the EIS. The transportation document not completed by even the threat of a railroad crossing a ranch. I have had to keep the possibility of a railroad crossing our ranch in the back of my mind since our ranch was first threatened by a Tongue River Railroad nearly 20 years ago.

COMMENTS
TO INTERSTATE COMMERCE COMMISSION
CONCERNING
DRAFT ENVIRONMENTAL IMPACT STATEMENT
FINANCE DOCKET NO. 30186 (SUB.-NO. 2)

October 20, 1992
Dana White
Section of Energy and Environment, Room 3214
Interstate Commerce Commission
Washington, D.C. 20423

After reviewing the Tongue River Railroad Company's (Ashland to Decker extension) Draft Environmental Impact Statement (TRRC EIS) I would like to offer the following comments.

The draft EIS has been prepared by the ICC's Section of Energy and Environment (SEE) to comply with the ICC's statutory obligations under the National Environmental Policy Act (NEPA) and other related statutes. Because this project is of such importance to and the effect to area so great, why was there no Congressional hearings to gather the impact information?

Public Participation - In December 1989, scoping meetings were held in Ashland, Mt. for two days. TRRC contends that the public identified areas of environmental concern regarding the proposed Extension that need to be addressed in the EIS. But it was not until June 28, 1991 that TRRC filed application with the Commission to even build the 41 mile extension. Question: How are members of the public supposed to identify Environmental and Impact areas when the line segment was not even established in 1989? There needs to be a new EIS done on the new extension and public input added, the land topography, soil, wildlife, and even social and economic impact of the extension are so different than that of the original 89 mile section, it is like comparing apples to oranges.

Reference to Light Precipitation-The reference to light precipitation in the extension area is a cause of concern. When 3-4 inches of rain falls on primary flat or med. low sloped ground as in the original 89 mile segment, time for absorption can occur.

When 3-4 inches of rain occurs on steep slopes such as the extension canyon, there is a great amount of runoff. TRRC basis for the revisions applied to the extension area is inaccurate.

Social and Economic Impacts - Since the ICC public hearings concerning the 41 mile extension were held, the matter of Glendive being made the refueling and repair point for TRRC equipment has been made a reality in the draft EIS.

However there has been no study of how this would effect the Glendive community social and economically, therefore I would strongly protest this EIS and suggest that TRRC's next EIS present the effects on the Glendive community.

Summary: As it stands the Draft EIS for the extension of TRRC (Ashland to Deckaz) line fails to address the proper areas of the environment and social and economic issues, and it is asked that the Commission reject it as inadequate.

Thank You
Pat A. Mischel
Pat A. Mischel
47 Road 261
Glendive, MT 59330
(406) 365-6690

10 copies to follow

cc: Mr. Thomas Ebsary

Page 2
John P. Reynolds Comments - Finance Docket No. 30186 (Sub-No. 2)

Diesel fuel is only one of the more obvious, and less hazardous, chemicals that arrive in an area by train. How much of the following substances can be spilled, sprayed, leaked, blown off, dumped or disposed of in the Tongue River Valley before it has an adverse effect on the environment there?

To keep the right of way clear, herbicides are used. What herbicides will be used and how often?

To reduce the amount of coal dust being blown out of the coal hopper cars, a chemical is sprayed over the loaded car. What is the chemical and how much of it is still blown off? What effect will coal dust have? How much coal dust will be blown off the passing trains?

The list goes on and on. Look at the U.S. Department of Transportation 1990 Emergency Response Guidebook, DOT P 5800.5. I am required to have this book in my possession anytime I am at my job. DOT P 5800.5 lists all the hazardous materials that are transported by rail and what emergency action is to be taken when these materials come in contact with the environment. How many of these will be carried through the Tongue River Valley. What emergency procedures will be used in this remote area when one of these hazardous materials is spilled? How can anyone ever replace an area such as the Tongue River Valley?

The needs of the Coal Producers, the industries they support and ultimately, the consumer are being met by the existing rail service. BNR has shown in the past that it can accommodate any potential increases in traffic and service. The Tongue River Railroad would be a duplication of service, causing great harm to existing rail service, the environment, the residents of the valley and is not needed.

Sincerely,
John P. Reynolds
JOHN P. REYNOLDS

COMMENTS CONCERNING THE
DRAFT ENVIRONMENTAL IMPACT STATEMENT
FOR THE
PROPOSED TONGUE RIVER RAILROAD
FINANCE DOCKET NO. 30186 (SUB-NO. 2)

SUBMITTED BY

JOHN P. REYNOLDS

Conductor, Burlington Northern Railroad Co.
Resident of Sheridan, Wyoming

My name is John Reynolds and I am a Conductor for the Burlington Northern Railroad. I have been employed by BNR for 19 years and a resident of Sheridan for the last 3 years.

If the proposed Tongue River Railroad's application is granted, and the line built, I will be forced to leave the Sheridan area.

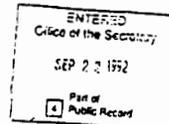
My wife works for the Sheridan County YMCA and is being trained to take over the Bookkeeping position there. She has trained for 2 years and will require another year. She is also attending classes at Sheridan College to receive a degree in business as a part of her training. She and The Sheridan County YMCA have considerable time and effort invested in this commitment and both will suffer if we are forced to leave.

Our Children are employed. Mary, 19, works for the Sheridan Center, Best Western Hotel. Amanda, 17, works for Penney's Department Store and attends Sheridan High School. The loss of jobs and friends would be devastating to them.

By seniority on the BN Railroad allowed me to move here and assures my position here under existing conditions. I have established friendships and have become involved in community projects. This is my home. When I moved, I intended to work until retirement in the year 2012 and remain in the area after retiring, enjoying the beauty of the surrounding country. If the Tongue River Railroad has it's way, they will destroy a portion of the area, the Tongue River Valley, and I will be forced to move.

My biggest concern is not the affects to my family, we can relocate and rebuild our lives, in time. I am deeply concerned about the effect of a railroad on the land, plants and animals in the Tongue River Valley. They can not move and rebuild. I see the results of normal railroad operations on the surrounding environment each time I go to work. Trains don't just pass through an area, they deposit portions of every substance they carry, on and beyond the right of way.

How much Diesel fuel will leak, drip and be spilled by the Tongue River Railroad and how much Diesel fuel can be absorbed in the right of way, surrounding land and river before having and adverse effect on the valley's plant and animal life?



KENZI WENDEYER KENT REEVES
THE WHOLE PICTURE
575 Guadalupe Court, NE
Albuquerque, New Mexico 87114-2309
505/898-4348

15 September 1992

Dana White
Section of Energy and Environment, Room 3214
Interstate Commerce Commission
Washington, D.C. 20423

RE: DEIS, FINANCE DOCKET NO. 30186 (SUB-NO. 2), TONGUE RIVER RAILROAD COMPANY--CONSTRUCTION AND OPERATION OF AN ADDITIONAL RAIL LINE FROM ASHLAND TO DECKAZ, MONTANA

Dear Dana White:

I am responding to the wildlife portions of the above mentioned Draft Environmental Impact Statement as a professional wildlife ecologist with over ten years experience in research and management of big game, furbearers, waterfowl, and various endangered species.

DESCRIPTION OF THE AFFECTED ENVIRONMENT

2.2.5.2 Terrestrial Wildlife

Upland Game Birds, page 2-9: Without having formally surveyed the area how can you state that no known grouse leks occur within the right-of-way? You fail to provide any documentation for this statement.

Threatened and Endangered Species, page 2-9: Document fails to define "normal use" of the area by Bald eagles. What do you mean by normal use? Is the magisterial indus abnormal? One peregrine falcon sighting was recorded in 1979. Have there been any surveys for peregrine falcons since that time? If so what were the findings?

ENVIRONMENTAL IMPACTS FROM THE PROPOSED EXTENSION

Construction

4.10.1.2 Wildlife

Impacts only address two groups of wildlife, big game and birds. This section fails to address the potential impacts to furbearers and non-game species. What would be the impact to others from the

and chemical spills, and riparian habitat alteration? What kind of impacts would occur to amphibians and reptiles during construction and from possible fuel and chemical spills?

Deer and Pronghorn, page 4-34: The proposed construction period is being called a "period of comparatively low stress for wildlife." Please document your reasoning for considering the fawning period for deer and pronghorn as a period of "low stress". Proposed construction during the spring months may result in higher fawn mortality.

Page 4-35: In the second paragraph you fail to state how the timing of construction would mitigate for the potential disruption of fawning, who would monitor such an action, and who will be responsible for pre-construction surveys?

Upland Birds, page 4-35: What other impacts besides "displacement" would occur from noise and activity? Would reproduction be affected? Would upland birds even nest? What occurs to upland birds during their "displacement"? How long are they "displaced"? The reduction of local native grouse populations that are already depressed would be a significant impact. Why was this not stated?

Hawks, Waterfowl, and Other Birds, pages 4-35 & 4-36: This section fails to address the significant impacts that noise can have on the various species of birds. At what distance would these birds be affected by noise from construction activities? How would their hunting and feeding behavior be affected by displacement due to noise and activity?

Other Mammals, page 4-36: This section assumes that mammals are "displaced" (there's that word again) only during construction, then move back home. This happily-ever-after construction scenario fails to consider the realities of wildlife behavior with regard to territoriality and home range movements. What would be the impact to "displaced" mammals from other species as well as their own?

4.10.1.1 Threatened and Endangered Species

Bald Eagle, page 4-31: What impacts could potentially occur during the short-term "displacement" caused by maintenance activities? This section fails to substantially address the impacts to bald eagles if they "choose not to utilize adjacent habitats because of train-related activities such as noise, potentially lower numbers of prey, and increased human activity." Have the bald eagles and other raptors been notified that they will have a choice in this matter?

fails to identify who will be responsible for surveys, monitoring, and mitigation activities.

Throughout this document terminology was used that provides significant loopholes for TRAC and the ICC to avoid responsibility regarding impacts to wildlife during construction, operation, and maintenance of the railway. The wildlife sections of this document are inadequate in addressing the impacts to wildlife populations from all of the related activities associated with the proposed railway. Thank you for the opportunity to comment on this document.

Sincerely,



Kent A. Reeves
Certified Wildlife Biologist

CC: Wallace McRae, Forsyth, MT
Native Action, Lane Deer, MT
Ochoco

Operation and Maintenance

4.10.2.2 Wildlife

Deer and Pronghorn, page 4-31: A decline in reproductive success, additional stress to wintering animals and the compromise of important habitat would result in a significant impact to deer and pronghorn populations. The disruption of daily and seasonal movement resulting in a net loss to the pronghorn population should also be considered a significant impact.

General Comments: For the most part this section glosses over the potential long term significant impacts to wildlife. Wise and various forms of human related activity can result in significant impacts to wildlife populations. This section fails to truly address or document the potential impacts to wildlife behavior and reproduction due to long term impacts resulting from operation and maintenance of the Tongue River Railroad.

UNAVOIDABLE ADVERSE ENVIRONMENTAL IMPACTS

5.8 TERRESTRIAL ECOLOGY

Okay, I can't stand it any longer. You have used the word "displacement" to the point where it has become meaningless. Although it does remind me of another term used quite frequently by the Pentagon and that is "collateral damage". How do you define "displacement" when used in the context of wildlife? This term assumes movement out of an area rather than the actual loss or decline of wildlife populations. If you are going to use this term you better be prepared to defend it and define it as well. Where will wildlife be "displaced" to and for how long? The unavoidable impacts mentioned in this section should also be considered significant.

5.10 NOISE

This section fails to address the significant impacts of noise to wildlife populations.

APPENDIX A MITIGATION PLAN

A.1.3 Terrestrial

(5) Fencing: This section fails to identify or describe the fencing. What type of innovative fencing would be used?

A.2.3.1 Wildlife

"Wildlife will recolonize those areas where their normal use patterns have been disrupted." This misleading and blanket statement is made without sufficient documentation or appropriate literature to substantiate it. Can you back it up? Also, this entire section

Rosebud County Weed District
P.O. Box 962
Forsyth, MT 59327

Dane White
Section of Energy and Environment
Room 3214
Intrastate Commerce Commission
Washington, D.C. 20423

RE: Finance Docket 30186 (Sub. No. 2)

Srs:

We, the Rosebud County Weed District and Board of Directors, are concerned with the construction and operation of an additional rail line from Ashland to Decker, Montana. In review of the Draft Environmental Impact Statement (Finance Docket No. 30186 (Sub-No. 2)) and the verified rebuttal statements of the Tongue River Railroad Management, we find very little information addressing the problem of noxious weed control in both the construction and operational phases of the railroad.

Our concern is that through the building and operation of the railroad, many new species of noxious weeds will be introduced into the area, and therefore, left to spread to adjoining private, state, and federal lands. Many of these noxious weeds are hard to control and very expensive to eradicate. Most of these Category I and II noxious weeds will render the land that they infest unusable.

If, in effect the railroad is built, the Rosebud County Weed District would require the washing of all equipment used in its construction prior to entering the area and before leaving the area within the boundaries of Rosebud County. Also, the Weed District would require the use of weed seed free ballast and other construction components (i.e. fill dirt) that would be brought into the County.

The Rosebud County Weed District would also require that the Tongue River Railroad have in effect an adequate weed management plan prior to the construction of the rail line. Also, the Weed District would require that the railroad comply with the weed management plan by using the correct chemicals and their recommended rates for each specific noxious weed treated.

The Rosebud County Weed Board would recommend a bonding requirement of all right-of-way land similar to that used in the Federal and State Reclamation laws for coal mines. The period of time recommended for these bonds would be twenty (20) years.

If there are any questions concerning this matter, you are encouraged to contact the Rosebud County Weed District by writing to P.O. Box 962, Forsyth, Montana 59327, or calling either (406) 356-7608 or (406) 356-2261.

Sincerely,

Rosebud County Weed Board

Art Hayes Jr

Art Hayes, Jr., Chairman
Robert Mereness, Vice Chairman
Arthur Polch, Member

Harold E. Stepper
Harold E. Stepper, Weed Supervisor

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October 11, 1992

Dana White
Section of Energy and Environment
Room 3214
Interstate Commerce Commission
Washington, DC 20423

Please consider these following comments on the DEIS filed by the Environmental Impact Statement submitted by your office with regards to Finance Docket No. 30100 (Sub-No.2).

This very slanted document consistently employs overly optimistic figures and only positive adjectives (will, probably, could, etc.) when addressing any potentially favorable impacts of the Tongue River Railroad Company's (TRC) proposed extension to a non-existent route. At the same time this supposedly impartial document repeatedly underestimates and uses negative wording (might, possibly, could, etc.) when referring to the many negative aspects that will occur upon the building of this unneeded line. TRC's wishful scenario's are taken as gospel truths while the many adverse impacts are portrayed as merely possible. No consideration for any scenario other than the "no build" option was even addressed. The people responsible for this document have not used all the pertinent facts when addressing the potential losses associated with the construction and operation of this 81 mile.

For instance, when addressing job loss at Forsyth (Pg. 20) due to traffic diversions that would definitely occur, you state "some railroad jobs... could be displaced". Let me assure you that a lot of railroad jobs will be lost. Current coal traffic handled by Burlington Northern Railroad (BN) that would be immediately lost is 45% of the total business at Forsyth. Another 35% of current business would be lost as the third area coal shutes less later to the new routing from Wyoming. This is a loss of 80% of BN's business through the Forsyth terminal and an appropriate number of BN employees will be removed from BN payrolls at Forsyth. This is from a pool of about 110 employees at an average annual salary of \$45,000. This is a loss of about \$5,000,000 per year! The job losses from the operating employees (train crews) are the only jobs addressed and even these are attempted to be minimized by falsely saying "this could be offset by individually negotiated severance agreements with BN". JOBS LOST DUE TO REDUCTIONS IN BUSINESS ARE NOT NEGOTIATED! THEY ARE LOST! Even job reductions by other means are not guaranteed to include any severance pay. No mention of any other jobs lost have even been considered. This includes the clerical, track, building, signal, and officers located at Forsyth. No mention of any lost jobs at Glendive, MT, are even considered, yet BN's business is not handled east of Forsyth by Forsyth crews as falsely stated in the last line of paragraph four: "The additional JTA loss of mileage from Miles City, MT to Forsyth (45 miles of the 124 mile run FT to GL) is handled by Glendive BN employees and will mean an additional 20% (35% or 50% of traffic) reduction in operating employees (24 of 90) located at Glendive, Montana. This is an additional loss of \$1,000,000 per year to the area of Glendive, as well as Forsyth where these railroaders work into and stay over night at. Forsyth will also lose the money spent by the American railroaders while staying over night as they will no longer work into Forsyth."

1 of 3

The only part of this draft that makes any sense at all is the recommendation to use the Four Mile Creek alternative route and avoid the most sensitive area of the Tongue River Valley and the reservoir near Decker. Any routing that runs over prime agriculture land and parallels pristine water is absurd when other routing is available. This actually includes the entire 81 mile line, as other routing is currently in place for permitted which can handle all of the traffic TRC would run.

Please rework your statements to include these very pertinent facts and include them in the final draft. Thank you.

Sincerely,

Paul N. Schmitling
Paul N. Schmitling
Local Chairman
UTU Local 408-PY
2219 Butler
Miles City, MT
59301

A copy of this document has been served upon TRC's representatives.

Any possible (projected) increases in demand for coal from the Merced-Decker mines or any of the Wyoming mines because of the Clean Air Act (CA), and would be handled by existing routing. These jobs would also be lost, yet are not addressed in this DEIS. No consideration for alternative energy sources, or for the building of scrubbers were factored into the projections for increased coal demand. These other options could make this extension completely unnecessary and a needless waste of the land destroyed by TRC.

No statements were included in this DEIS pertaining to the realistic probability that no new coal mines will ever open along the entire TRC route. This is supported by a Montana Department of Natural Resources document in comment to this DEIS, in addition to the statements of over 7000 opponents who knew this will be the actual case! This is mostly because of the larger restriction of coal mined in Montana. Any impact statement should include all the different scenario's that could occur, not just the wild dream of the proponents. Again the authors wrongly assume that TRC's wishful scenario will happen. The stripping figures used (Pg. 40) do not reflect the deeper overburden and smaller pieces of coal that exist in the proposed mine areas around Ashland. This alone makes Wyoming coal more cost effective, despite the longer distance. The area impacts projected in the original EIS have not occurred for this very same reason.

The data sources for most of this draft are out dated, some older than 25 years, and were not compiled for use in railroad construction. Telephone conversations were the only updated information obtained and are not reliable as fact. No on site inspections of any of the affected area were used in this report. This is an injustice to the people affected as well as the land that will be destroyed.

Very little attention was given to the certainty of fires that occur along every railroad. The close proximity to the Custer National Forest along this proposed route was not given any consideration. Will TRC pay the costs of fighting their train caused fires in this National Forest? Can this area be reforested after fire loss? Fires are prevalent along railroads and the only way to reduce damage to the surrounding area relies on immediate response to fires when they occur. TRC says they will operate with no cabooses and only two men crews on their trains. This would eliminate the reporting of fires caused by trains until such time as someone happened along to see the fire from a distance. Due to the rough terrain, sparse population, and the lack of roads in this area, fire response time would be even greater than other more populated areas. Manned cabooses should be required in remote areas like this to prevent extensive fire damage and increase public safety. Large fires will be tremendous. I have worked for railroads for 21 years and know that trains cause lots of fires in many different ways.

No consideration was given to long crossing delays near the proposed sidings necessary to facilitate meeting of trains. Delays at or near sidings could be anywhere from 10 minutes to over an hour. No provision for delays due to trains stopping along the route for various operating reasons were addressed. These delays increase the emergency times, emergency response times, and maintenance scheduling, etc., etc., causing accidents.

2 of 3

3 of 3

A-35

Montana Department
of
Fish, Wildlife & Parks



RC 1, Box 3004
Miles City, MT 59301
August 18, 1992

Dana White
Section of Energy and Environment, Room 3214
Interstate Commerce Commission
Washington, D.C. 20423

RE: Finance Docket 30186 (Sub. No. 2)

Dear Ms. White:

Thank you for this opportunity to comment on the Draft EIS regarding the Tongue River Railroad Company's proposal for construction and operation of a rail line from Ashland to Becker.

As Regional Supervisor for the Dept. of Fish, Wildlife and Parks, my comments will pertain to the adequacy of the EIS in addressing the Fish, Wildlife, and Recreational Resources. In a number of instances, the Department feels that the information provided in the draft EIS is not sufficient to allow adequate evaluation of impacts.

Recreational Resources: Discussion and evaluation of the recreational resources and activities at Tongue River Reservoir State Park are extremely limited and no longer current.

Section 2.2.2 Land Use, page 2-1 refers to the site as Tongue River State Recreation Area and indicates it is classified as a Class II park. This nomenclature was not incorporated in the naming or classification of state parks. Likewise, statements in footnote #4 at the bottom of page 2-3 no longer apply and should be deleted. Tongue River State Park is considered an important component of the State Park System with great potential to serve the people of southeast Montana and adjacent Wyoming. Not incorporated in the EIS is recognition of a \$1.6 billion proposal for capital construction including roads, parking, sanitary facilities, boat ramps, trailer dumps, picnic areas, camp sites, and concession facilities.

Use and income figures stated in the draft EIS in section 4.1.1.1 are from 1989, prior to completion of Highway 314, and are no longer valid. Revenue generated at the site increased from \$15,609 in 1989 to \$30,769 in 1991. Total use figures have likewise increased, but probably no more than 10% to approximately 35,000.

The draft EIS also fails to consider impacts on the concession currently operating on-site. The concession represents considerable private investment with plans pending for extensive

Executive Summary - bottom of VII and top of IX - Four Mile Creek in Tongue River Dam. In addition to the attributes discussed, it should be noted that this section is also an important fishery. It has a trout fishery (somewhat rare in southeast Montana) as well as smallmouth bass and other species. Reference:

Eiler, A.A., M.W. Gorges and L.W. Morris. 1980. Distribution of Fishes in Southeastern Montana. MT Dept. of Fish, Wildlife and Parks and Bureau of Land Management. 136 pp.

Page 2-10 - Bottom of page - In the 1970s fishing pressure could be accurately described as low. This is no longer true. The reservoir is now heavily used by anglers. The 19,857 angler day figure for the '89-90 fishing year makes this the 2nd most heavily used body of water in the region and 10th in the state. The reference to "low level of angler pressure" should be deleted.

Page 2-11 - Bottom - Statement not correct. The 5,817 angler days is for the whole Tongue River in Montana.

Page 2-14 - Overwinter survival of trout in the river below the dam has never been measured. Based on angler catches of large trout, overwinter survival would have to be considered at least fair. Section 4.9.1.8 - Page 4-60 Reference to "little over wintering survival" in first paragraph should be corrected.

The above inaccuracies are of minimal consequence. Of far more serious concern is the almost total lack of engineering data regarding construction of the railroad, associated bridges and tunnel, and an adjacent access road through the narrow ten-mile canyon below the Tongue River Dam. The degree to which the project will involve channel modifications, bank stabilization, and permanent structures in the river, is not adequately addressed. Such structures and modifications have the potential to cause significant hydraulic changes with resulting long-term water quality and river bed degradation.

In order to fully evaluate the impacts of the preferred route, it is imperative that design and construction criteria be provided in sufficient detail to allow in depth analysis. Such information is almost totally lacking in the draft EIS.

Since the most significant negative impacts are expected to occur in the canyon below the dam, the four-mile alternative appears to have far less adverse effect on the fishery.

4.1.1.2 Facilities Acquisition

The discussion of easement acquisition at the Miles City Hatchery does not adequately address current conditions. Hatchery property was identified in 1984 as "necessary" to complete connection of TRNC to the BN line. Although the DFWP has repeatedly requested that sufficient information be provided to allow evaluation of

improvements. Gross sales of \$41,357 were realized by the concession in 1991.

One of the most serious omissions in this section of the EIS is a total lack of graphic references showing the proximity of the rail line to recreational developments. No maps are presented showing proposed relocation of the county road, access roads, and crossings. Meaningful evaluation of the impacts is not possible without better information.

In addition, no consideration has been given to the pending proposal (currently being considered by Congress for funding) to re-build the Tongue River Dam in order to address safety factors and Northern Cheyenne Indian water rights. This proposed project would raise the water level by an additional four feet.

Shoreline displacement at these higher water levels would encroach to a considerable degree upon existing facilities, forcing a relocation to the west. The combination of an encroaching shoreline on the east and an immovable rail line on the west could have devastating impacts on this state park. These impacts should receive attention in the EIS.

There is no consideration or discussions of impacts that the proposed project would have on the aesthetic enjoyment associated with an outdoor camping, picnicking, or fishing experience. Although usually considered subjective in nature and difficult to evaluate from an economic standpoint, such values are real and should not be ignored. Currently, quiet hours are imposed on users at 10:00 p.m. in order to ensure a relaxing outdoor experience. The EIS should consider the serious impacts of high density, high speed train traffic in such close proximity to recreational facilities.

The draft EIS also fails to evaluate impacts on Tongue River State park during the construction phase when workers and families might be expected to place heavy demands on the camping and recreational facilities available at the reservoir.

Under the Four-Mile alternative, it does not appear that impacts to Tongue River Reservoir State Park would be a major factor.

Fisheries: Several inaccuracies and omissions in the text should be corrected:

Executive Summary - Page V - 2nd and 3rd paragraph. The document fails to mention that Rosebud and Big Horn counties will also have permitting authority in case of railroad proposals for river channel modification. The authority for state permits under the Natural Streambed and Land Preservation Act of 1975 is solely the responsibility of the County Conservation Districts, not the County Planning Commissions as stated.

Impacts to the hatchery operations, water supply, and structures, none has been forthcoming. Since 1984, the hatchery has expanded to the extent that the acreage desired may no longer be available regardless of impacts.

4.10.2 Wildlife

Impacts to wildlife appear to be reasonably accurate and inclusive. In fact, negative impacts in some instances, such as effects of fencing on deer movement (Page 4-92) may be somewhat over emphasized.

However, the manipulation or loss of up to 781 acres of wildlife habitat, the majority being important sagebrush-grassland types, does have the potential for significant impacts. These impacts are best addressed through mitigation measures discussed below.

Mitigation of Impacts: Appendix A

A.9.1 General

In general, the Draft EIS does not address the need to identify a means by which specific mitigation measures are identified and strong irrevocable commitments made as a condition of the permitting process. The document contains abundant reference to what "should" or "could" be done to mitigate various actions or conditions. Acknowledgement of what "could" be done, however, does not constitute a commitment to mitigate.

From a Fish, Wildlife and Recreation standpoint, the Mitigation Plan focuses primarily on techniques to document losses or minimize impacts during construction. There needs to be more in-depth discussion of mitigation measures which would compensate for losses, both tangible and intangible.

The proposal for a multi-agency task force to advise, assist, and coordinate with TRNC appears to have limited applicability as proposed. A task force may function positively in the evaluation of impacts and the identification of mitigation measures, but would be most effective in the preliminary planning and permitting phase. Once mitigation measures are identified and TRNC committed to a pre-determined action, it would then be appropriate for the Task Force members to have the option to use additional resources to further enhance the mitigative actions. The option to "enhance" mitigative actions rather than "accomplish" them should be clearly stated.

The discussion of potential "terrestrial" mitigation measures on page A-18 and A-19 needs to be strengthened to include more imaginative and meaningful compensation measures for fish and wildlife impacts. For example, desirable fishing access sites could be identified and commitments made for acquisition and development by TRNC. (The Department is not anxious to own and "manage" isolate cutoff parcels.)

A more effective approach to habitat mitigation could involve initiation of a program by which TRAC compensates landowners for development of habitat enhancement projects on lands adjacent to the corridor.

Mitigation of impacts to Tongue River Reservoir State Park is scarcely discussed in the draft EIS. Under the preferred route, these impacts could severely diminish recreational values and should be addressed. Mitigation might involve development of access and relocation of recreation facilities to the east side of the reservoir.

Four Mile Alternative:

Since the Notice of Availability of Draft EIS specifically requests comments regarding the Four Mile Alternative, the Department would like to emphasize that from a Fish, Wildlife and Recreation standpoint, there is no question but what the Four Mile alternative would have far fewer impacts than would the preferred alignment.

Thank you again for this opportunity to comment.

Sincerely,

Richard I. Ellis
Richard I. Ellis
Regional Supervisor

**Montana Department
of
Fish, Wildlife & Parks**



1420 East Sixth Ave.
Helena, Montana 59620
September 23, 1992

Dana White
Section of Energy and Environment
Room 3214
Interstate Commerce Commission
Washington, D.C. 20423

RE: Finance Docket 30186 (sub No. 2)

Dear Mr. White:

This is a comment on the environmental statement for the proposed Tongue River railroad.

The document cites a study I conducted during the mid 1970's. The final report of the Blinney-Docket Wildlife Study is dated 1977. There would be parts of the report badly outdated by this time. Depending on how the document is used, many data sets, conclusions and recommendations would need to be modified or changed entirely due to the lapse of time since the original investigation.

Many environmental changes can and do occur, and new information formulated, over a fifteen year period. I would suggest a careful evaluation of the validity of using dated information.

Sincerely,
Stephen Knapp
Stephen Knapp, Chief
Wildlife Habitat Bureau
Wildlife Division

**DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION**



GOVERNOR
STATE OF MONTANA
MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
LIFE SERVICES BUILDING
100 EAST SIXTH AVENUE
HELENA, MONTANA 59620

October 21, 1992

Ms. Dana White
Section of Energy and Environment, Room 3214
Interstate Commerce Commission
Washington, D.C. 20423

Re: Finance Docket 30186 (Sub No. 2), Tongue River Railroad Extension Draft EIS

Dear Ms. White:

The Montana Department of Natural Resources and Conservation is commenting on the Tongue River Railroad Extension Draft EIS because we are responsible for the operation, maintenance, and rehabilitation of the Tongue River Dam and we have concerns regarding the preferred alignment of the extension of the Tongue River Railroad in the area of the dam and reservoir.

The State (owner of the Tongue River Dam), the federal government and the Northern Cheyenne Tribe have negotiated a compact of Tribal water rights. The Compact includes rehabilitation of the Tongue River Dam and raising the reservoir level to provide water to the Tribe. This compact was recently ratified by Congress and, on September 30, 1992, President Bush signed the legislation into law.

Our comments and concerns along with 10 copies are attached. Thank you for the opportunity to comment on the Draft EIS.

Sincerely,

Karen Barclay Fagg
Karen Barclay Fagg, Director

KBF:JS:ms

c: Mr. Thomas Ebbery
enclosures: original comments & 10 copies



OCT 22 2 51 PM 1992 DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

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OCT 21 1992

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES & CONSERVATION
Comments on Draft EIS
Finance Docket 30186 (Sub No. 2),
Tongue River Railroad Extension Draft EIS

The state-owned Tongue River Dam is an unsafe, high hazard dam. The U.S. Army Corps of Engineers have designated the dam unsafe due to the inadequate spillway. The state has plans to replace the existing spillway and, at the same time, raise the reservoir level four feet. President Bush, on September 30, 1992, signed legislation authorizing federal participation in the project and ratifying the state's reserved water rights settlement with the Northern Cheyenne Tribe. The state has initiated preliminary studies necessary for the completion of our EIS and plans to finish construction by the end of 1997.

The state has several concerns regarding the preferred alignment of the railroad. Two major areas concern us, first the railroad company's proposed alignment from Four Mile Creek to the dam could potentially put lives at stake during flood events and secondly, the preferred alignment from the dam to the Spring Creek spur could hinder the department's and the Tongue River Water Users Association operation of the dam and reservoir.

Our first and foremost concern is for the safety of the people living below the dam. Of particular concern to the department are the five additional crossings by the railroad of the Tongue River in the reach from the dam to Four Mile Creek. In the event of a major flood at the dam, the railroad bridge embankments would act as restrictions to the flood flow in the river channel and floodplain and could cause inundation of additional dwellings and therefore increase the population at risk below the dam. The EIS analysis of this potential used the U.S. Bureau of Reclamation's threat to life analysis. More current information was used for the department's *Soilway Design Flood Investigations for Tongue River Dam*. The most current information available, especially considering the state's plan to raise the reservoir level, should be used for all impact analyses downstream.

The draft EIS states that U.S. Army Corps of Engineers HEC-1 flood routing was performed to predict the effects of the embankments on the flood stage in the river assuming a breach of the dam under existing conditions. Assumptions were made and conclusions drawn (e.g. 4-2.2.3, page 4-62) from the results of that modeling effort that may not be borne out if more rigorous modeling is done as indicated on pages 4-57 and 4-61.

The HEC-1 model should also be run for the entire Tongue River valley for flood events less than the breach scenario. The railroad embankments may pose a threat to dwellings that would not otherwise be affected during smaller flood events. Flood

routing that assumes the railroad embankments act as dams that eventually fail should be performed also.

The HEC-1 model does not calculate the effects on flood stage upstream of the embankments. Increased back-water elevations upstream of the embankments could inundate additional dwellings. HEC-2 backwater analyses should be performed at each of the river crossings (including the one downstream of Ashland).

Our second major concern involves access to the dam. The preferred alignment would sever the county road on the west shore of the reservoir in several locations. The ES treats this impact as if it were only a recreational access problem. This same county road is the main access to the dam for operational purposes or in case of emergency. The ES indicates that the road would be realigned parallel to the rail line "providing new access to the recreation area and reducing numerous public grade crossings". This appears to be reasonable mitigation except in the areas where the line would cross Monument and Leaf Rock creeks. At Monument Creek, the alignment map shows the rail line crossing the high water line as it presently exists, even without considering the impending four-foot raise of the reservoir. At Leaf Rock Creek both a major cut and a major fill or bridge will be required. At both these locations, realigning the road to parallel the rail line does not seem feasible. Whatever mitigation is proposed for the road must ensure unrestricted, year around access to the dam.

Other concerns of the department involve the actual construction of the rail line, more specifically, blasting during construction and construction scheduling. Building the preferred alignment would require a major cut one mile west of the dam. The draft ES states that blasting may or may not be employed and more analysis is necessary. The railroad's geotechnical investigation program prior to construction must be closely coordinated with this department.

The department plans to initiate construction activity at the dam in late 1994 or early 1995. The water right agreement with the Northern Chayenne Tribe requires that we begin post-construction refilling of the reservoir in late 1997. Since both the department and the railroad are planning major construction activities in the same area, the construction schedule for the railroad must be coordinated with the department to avoid impacting the department's time frame for rehabilitating the dam. Also, the relocation of the county road must be coordinated to avoid duplicative efforts.

To summarize, the Montana Department of Natural Resources and Conservation has safety and access concerns regarding the building of the Tongue River Railroad Company's preferred alignment between Four Mile Creek and the Spring Creek railroad spur. We are concerned that the Tongue River Railroad Extension project would have much more impact on our existing project than the ES indicates. The preferred alignment has the potential to put additional lives at risk below the dam during flood events as well as potentially hindering access to the dam. All the state's concerns should be more fully analyzed for the Final ES.

Dana White
Page 2
October 20, 1992

northern terminus of the proposed TRRC line, and as the proposed line would markedly increase train activity through the central business district, Missis City would be greatly impacted by increased rail and associated motor vehicle congestion. Consideration must be given to updating TRRC haulage estimates, as well as the estimation of subsequent increased Burlington Northern rail traffic. Provisions should be made for the TRRC to either construct, upgrade and maintain all crossings (at-grade or grade-separated), signals and pavement markings, or compensate Missis City for their maintenance.

- 4. The subject document does not appropriately address the additional short and long-term economic impacts which would arise from the construction of the proposed 42-mile extension. Although the national marketing opportunities created by the addition of this line are difficult to assess, a need exists for careful consideration of this subject, especially in the area of an increased traffic base resulting from that economic expansion.

Mr. Dan Martin, a transportation planner on the MDT Planning and Programming staff, will act as the point of contact for further coordination or comment. Please feel free to contact him at (406)444-6394.

Thank you for the opportunity to comment on this proposal.

Stephen C. Kolosi
Stephen C. Kolosi, P.E.
Deputy Director of Planning & Programming

SCX:WU:D:PP:25.kmc

cc: Rosebud County Commissioners
Big Horn County Commissioners
Custer County Commissioners
Department of State Lands
Missis City - County Planning Office
Larry Williams - MDT - Secondary Roads Engineer
Donald J. Lovely - Glendive District Engineer

Montana Department of Transportation
2701 Montpelier Avenue
Helena, MT 59607-9778

October 20, 1992

Dana White
Section of Energy and Environment
Room 3214
Interstate Commerce Commission
Washington, D.C. 20423

Subject: Final Scope of Study - Draft EIS for Finance
Docket No. 30188 (SUB - No. 2) Proposed Tongue
River Railroad Line from Ashland to Decker,
Montana

After reviewing the subject document, the Montana Department of Transportation (MDT) offers the following comments. These issues have been presented in previous correspondence but have yet to be adequately addressed in the EIS. All recommended amendments or inclusions are directed toward Section 4.3, Transportation, of the subject document.

There should be an acknowledgement of the need for acceptable design standards for roadway construction, railway crossing construction, or reconstruction. Roadway segments which do not incorporate acceptable design standards have the potential for the degradation of safety and load-bearing capacity.

Because the construction of this project is for the sole benefit of the TRRC, the MDT and the involved Counties should bear none of the costs incurred in the development, construction, or operation of this project. If at-grade crossings are constructed, the TRRC should be responsible for maintaining signals, cross-bucks, crossing gates, or any other type of traffic protection apparatus, as well as roadway surfacing at the crossings. Provisions should also be made for the TRRC to either maintain advance warning signs and pavement markings or to compensate the counties for their maintenance costs resulting from this project.

- 3. In Section 4.3.4.1 of the EIS, Traffic Projections, the statement is made that, "Since little traffic is expected to move west from Missis City, this review of decline impacts associated with TRRC trains has focused on the communities east of Missis City." As the

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OFFICE OF THE
STATE HISTORIC PRESERVATION
OCT 21 1992

State Historic Preservation Office
Montana Historical Society
Mailing Address: 225 North Roberts • Helena, MT 59620-9990
Office Address: 102 Broadway • Helena, MT • (406) 444-7715

July 30, 1992

Dana White, Section of Energy and Environment
Room 3214
Interstate Commerce Commission
Washington, D.C. 20423

Re: Tongue River Railroad (Ashland-Decker) DEIS
Finance Docket 30188 (Sub No. 2)

Dear Ms. White:

Thank you for the opportunity to review the above referenced document. We are commencing in general and within the framework of compliance with the requirements of MCFR300. A Programmatic Agreement (PA) is now being forwarded in order to consider cultural resources in the planning of the undertaking by first allowing for the identification and evaluation of all cultural resources located within the area of potential environmental effect and then developing a treatment plan consistent with the National Historic Preservation Act and the American Indian Religious Freedom Act.

There is a critical need under either the NEPA process or MCFR300 to coordinate project planning with the Northern Cheyenne and any other affected tribes, which might include soliciting input during survey design. Early involvement will help integrate identification efforts with careful consideration of perhaps more intangible elements associated with cultural landscapes and traditional cultural values. We feel, for example, that vegetative survey work described under section 4.10.1.1 would be most useful if carried out as early as possible with tribal traditional input to relate it to the social fabric of the Northern Cheyenne. This work might occur in conjunction with the cultural resource inventory fieldwork, as it currently proposed in the draft PA. Our chances of successfully implementing the treatment plan and dealing with traditional cultural resources when direct and indirect impacts might not be avoided or mitigated will be greatly improved if these studies and subsequent efforts take place early in the planning process.

Finally, we note that Tallent and Deaver's 1991 report to your agency on the railroad's potential cultural effects discussed increased timber harvesting as being an indirect effect of the project upon cultural resources and perhaps spiritual values. This would appear to be a valid consideration to address under Section 4.14.4 of the DEIS.

Sincerely,

Dana L. Vaneet
Dana L. Vaneet
Archaeologist

The Office of Public Instruction

Nancy Keenan
State Superintendent



State Capital
Helena, Montana 59620
(406) 444-3093

September 21, 1992

Dana White
Section of Energy and Environment, Room 3214
Interstate Commerce Commission
Washington DC 20423

Re: Finance Docket 30186 (Sub No. 2)

My name is Nancy Keenan, State Superintendent of Public Instruction for Montana. I have reviewed the Draft Environmental Impact Statement for the Tongue River Railroad's proposed rail line from Ashland to Decker, Montana. My concern focuses on the lack of analysis of the effect of the rail line on Montana's and Wyoming's competitive positions in the national coal markets.

It is clear that transportation cost is a primary factor in determining where Montana coal is sold. While it is generally true that Montana coal is more expensive at the mine mouth than Wyoming coal of a similar quality, Montana coal from the Colstrip and Hardin areas sells in the upper midwestern market because of its transportation advantage over Wyoming coal. With the construction of the Tongue River Railroad, the distance-to-market for Wyoming coal from the Powder River Basin to the upper Midwest will be shortened, thus reducing if not eliminating the transportation advantage enjoyed by coal producers in the Colstrip and Hardin areas.

Coal production from the Western Energy, Peabody, and Westmoreland mines in the Colstrip and Hardin areas totaled 18.5 million tons in calendar 1991, representing 21% of Montana's 1991 coal production. The Draft Environmental Impact Statement does not consider the negative impact that construction of the Tongue River Railroad may have on production levels at these mines.

Furthermore, the DEIS does not substantiate its forecast of production growth from the mines in Docket Montana and the potential mines in Ashland. The DEIS forecasts that 29 million tons of coal will be produced in Montana and transported along the Tongue River Railroad by the year 2010 (22 million tons more than was produced in 1991). This growth scenario is difficult to fathom without a specific explanation of where the growth in demand will come from. As I review the analysis, I have to conclude that the people of Montana would be better served by continued production

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Finance Docket 30186 (Sub No. 2)
September 21, 1992
Page 3

rangeland, sacred ground, a pristine valley, and the economies of Forest, Colstrip and Hardin in order for midwestern utilities, their customers and their shareholders to reap the benefits of lower utility costs. Having asked this question, I find no affirmative answer. I urge the Interstate Commerce Commission to deny the application of the Tongue River Railroad.

Respectfully submitted,

Nancy Keenan being first duly sworn, deposes and states that she has read the foregoing Verified Statement and that the same is true and correct.

SUBSCRIBED AND SWORN
before me this 21st day of September, 1992.

Wade Hunter
Notary Public for the State of Montana
Residing at *Helena, MT*
My Commission expires *April 5, 1994*

Interstate Commerce Commission
Finance Docket 30186 (Sub No. 2)
September 21, 1992
Page 2

from the Colstrip and Hardin mines than by a proposal that negatively impacts existing mines in anticipation of increased production from two existing mines and three potential mines.

In a previous letter to the Interstate Commerce Commission regarding the proposed Tongue River Railroad, I stated my concerns about the impact of the railroad on the local governments and schools within the Montana's coal-producing counties. I repeat some of those concerns here.

Coal taxes are a significant source of revenues to the State of Montana and to local governments within the coal-producing counties. Coal producers pay \$40-45 million annually in coal severance taxes to fund the operations of state government, including state aid to public schools. In addition, coal gross proceeds taxes provide another \$11.3 million annually for the operations of local governments and schools.

As a result of legislation passed in 1989, coal producers pay "property taxes" through a flat-rate gross proceeds tax rather than through the imposition of a mill levy. The effect of this change is that coal producers are not subject to increases in local mill levies. It is ironic that as local property taxes rise, due to increased demands on the communities affected by the proposed construction, the coal companies will be held-harmless from these property tax increases.

The state legislature has granted a series of tax rate reductions and incentives in the name of maintaining existing levels of coal production in the state, even though tax collections have fallen as a result. The extension of the Tongue River Railroad is likely to overrule any positive impacts that may have resulted from the lowering of the state severance tax and exclusion of coal producers from further property tax increases.

It appears that Montana taxpayers will take a double hit if the Tongue River Railroad is built. First, through the loss of coal severance and gross proceeds tax revenue; and second, by bearing the brunt of the social and infrastructure costs while coal producers are unaffected by the property tax increase. I fear that under this proposal Montanans will pay the social, financial, and environmental costs of constructing the proposed rail line, while the economy of Gillette will enjoy the benefits in terms of mining jobs and tax revenues, and taxpayers in the Upper Midwest will reap the benefits of any lower electrical costs.

In reviewing the proposed of the Tongue River Railroad Company to build a rail line between Ashland and Decker, I find myself asking why the people of Montana would want to disrupt valuable



College of Agriculture
University of Wyoming
Sheridan Research and Extension Center

431 Wyoming Rd.
Sheridan, WY 82801
Phone (307) 757-3411

September 4, 1992

Dana White
Section of Energy & Environment, Rm 3214
Interstate Commerce Commission
Washington, DC 20423

Dear Mr. White,

This letter is in reference to Finance Docket 30186 (Sub #2), i.e. the proposed Tongue River Railroad (TRR) construction in southeastern Montana.

I am the Superintendent of the University of Wyoming's Sheridan Research and Extension Center (SREC), which is an agricultural experiment station. The station is located 6 1/2 miles east of Sheridan, WY, on Hwy. 326. I am in contact with the Burlington Northern Railroad (BN) every day as the spur from the Sheridan-Gillette line branches at and runs through the SREC to the Decker and Spring Creek coal mines.

After reading the draft environmental impact statement I have some grave concerns. The first of these is noxious weed control, page A-24. Using screened ballast will help tremendously in the prevention of the introduction of these weeds, however, this solution is not the total answer as weed seeds are carried by the railroad cars from other sections of the line. Here at the SREC, the BN used the same construction procedure of screened ballast and at the moment I am fighting infestations of leafy spurge, Russian knapweed (both noxious weeds), and puncturevine. The weeds were not present on the farm before the railroad spur was built to Decker in the early 1970's. Bindweed grew on the farm prior to the railroad, however, I am continually fighting the spread of this noxious weed from the BN right-of-way. The leafy spurge, Russian knapweed, and puncturevine infestations started due to weed seed falling off the railroad cars or railroad maintenance vehicles and then taking root in the railroad bed or right-of-way road.

At the SREC we are responsible for the production of the foundation cereal grain seed for the certified seed growers in the state of Wyoming. There is a zero tolerance for any leafy spurge, bindweed, and Russian knapweed seed in all Wyoming certified seed classes. I strongly feel increasing the number of coal or freight trains traveling through the SREC via the TRR will accordingly increase the noxious weed infestations on the right-of-way in years to come.

UNW

Leafy spurge is a very difficult to control perennial weed because it reproduces by roots sprouting and pushing up new buds or by seed. Applications of pesticide must be sprayed during specific plant growth stages for any hope of control. The plant has a root structure that can go beyond 12 feet into the soil. Russian knapweed is a biennial which uses a toxin given off by the roots to kill neighboring vegetation enabling the weed to flourish. Any form of knapweed is hard to control because of the weed's rapid spread over the surrounding country.

The Tongue River Railroad say they will spray monthly and use mechanical means for weed control, however, if they can be compared to BM practices this will occur rarely and not very well done and noxious weeds are more than likely to infest private land bordering the railroad. The rough terrain surrounding the proposed railroad is mainly not conducive to aerial or equipment spraying. Essentially, chemical weed control efforts by landowners may only be accomplished using backpack sprayers. Fighting these weed infestations will cost ranchers via reducing land values, decreasing their herds due to diminished range carrying capacities, and paying labor expenses from the hiring of trained spray crews. Considering the size of many of the ranches in the Tongue River Valley, the degree of the weed species infestation could be enormous. Backpack sprayers can only cover a small amount of land in a period of time when compared to conventional methods, resulting in not all the weed infestations being treated during the summer and early fall months. This will eventually lead to more and more weed plants and seed to spread over the countryside.

My second concern is range fires and they are definitely a certainty with the introduction of the Tongue River Railroad. As a volunteer fireman for the Clearmont Fire District, I have seen several fires burn up to 30,000 acres each in the same type of terrain as the Tongue River Valley before suppression is possible. Much of this country is so rough and isolated that the few roads are the result of a caterpillar blading a roadbed along a sidemill through a pasture. I've been on range fires where the only method to fight a fire in a ravine or gully was to let it burn up to the ridge. Much of this country is too rough to drive an old WWII Army 6 x 6 over. Most of the firefighting equipment being used to fight these fires in the southeastern Montana and northeastern Wyoming country is with outdated, small equipment owned by the ranches or the fire districts. The railroad may say they will have "state-of-the-art" equipment (page 4-7), but what use is the equipment if you can't get to the fire?

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In addition, most of the coal trains will not have a caboose, so if a fire does start it may go undetected until a rancher or the next train sees the smoke. I know that a range fire burning unattended in this windy country for even a few hours is going to spread over more pasture than just 3 acres. The terrain and forest in the Tongue River Valley are completely the opposite in accessibility and fire fuel when compared to the Gillette area, so a comparison between these two locations is ludicrous.

On page 4-7 the ranchers say they are concerned with trespass and I agree with them. With the Decker-Spring Creek spur going through the fare we have noticed a significant increase in the trespass of individuals onto the fare using the railroad right-of-way with subsequent property and crop damage the result. The TRR may put up no trespassing signs, but unless they implement locked gates, trespassing will occur. I feel the ranchers have a real concern on this issue.

Due to grave concerns on noxious weed invasions and increased fire danger both on the SREC and the Tongue River Valley, my opinion is the proposed Tongue River Railroad should be denied a permit by the ICC for construction and operation.

Sincerely,

Roger Hybner
Roger Hybner
Superintendent

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Medicine Wheel Coalition for Sacred Sites of North America

P.O. Box 401 - Riverton, WY 82501 - 307-834-4534



Position	Name	Address	Phone
President	Dana White	Section of Energy and Environment, Room 3214	
Secretary		Interstate Commerce Commission	
Treasurer		Washington, D.C. 20423	

September 8, 1992

Dana White
Section of Energy and Environment, Room 3214
Interstate Commerce Commission
Washington, D.C. 20423

Re: Pipeline Docket No. 38184 (Sub - No. 2)
Dear Ms. White:

I am the President of the Medicine Wheel Coalition for Sacred Sites of North America. The Coalition consists of traditional spiritual people who are representatives formally designated by several tribes in the Great Plains region.

I am greatly concerned about the proposal to construct and operate a rail line from Ashland to Decker, Montana. Your draft Environmental Impact Statement identifies the devastating impact of the project upon the traditional religious practitioners of the Northern Cheyenne people, but recommends nothing of substance to counteract that impact.

On Pages 2-18 through 2-40 of the Draft EIS, you recognize that the people of Birney Village are among the most traditional of the Northern Cheyenne, that Birney is located directly adjacent to the proposed rail line and that the residents of Birney have a close spiritual and cultural relationship with the Tongue River. You further recognize that medicinal plants are collected along the river and that "from the Northern Cheyenne perspective, coal pollution of the water will destroy the spiritual tie between the people and the spirit of the river." You admit that "they believe that there is no mitigation possible for the loss of this spiritual tie" and that, in addition, the basic changes in the area will "inhibit the ability to continue traditional religious activities." Finally, as the Tongue River Valley is the home of spirits and plant and animal relatives of the Northern Cheyenne, and traditional practitioners consider it to be their responsibility to take care of the Valley in order to protect the journey of future

generations "to join those now living," the expansion of coal mining associated with the railroad would be "a direct and eminent threat to their ability to maintain their spiritual ties to their homeland."

Summarizing these findings, on Page 5-6, you state that "the impacts from the changing surrounding landscape associated with rail operations, coal mining and increased development would represent an irreversible spiritual loss."

In view of these devastating findings, it is outrageous that the recommendations of the Draft EIS show so little sensitivity to these concerns. You simply recommend that a programmatic agreement be negotiated which would provide for mitigation of the impact of the project. Yet it is clear from your own analysis that unless the project is abandoned or the route of the project substantially altered, it is not possible to meaningfully mitigate its impact upon the traditional Northern Cheyenne community.

Indeed, it appears that not only have you not taken the "hard look" at alternatives required by Federal Law, you have taken no look at all. The need for this development is assumed by the ICC - there is no real analysis of whether to do the project, only how. Moreover, you simply state in a conclusory fashion that there are no other alternatives to the proposed route except the Four Mile Creek alternative. Given the devastating spiritual impact upon the Northern Cheyenne, this is simply not acceptable. The ICC should do a detailed and comprehensive analysis of all alternatives to this proposal in terms of other potential rail routes, possible modifications to existing routes and a survey of other areas in which coal mines might be located. Without such an analysis, it cannot be said that any real effort to address the concerns of the traditional Northern Cheyenne has occurred.

In the Draft EIS, you discuss a range of social ills currently faced by the Northern Cheyenne people. This can be found on other reservations as well. As a Traditional Elder of the Northern Arapaho on the Wind River Reservation in Wyoming, I have found that many of our troubled youths have overcome their personal problems and become valuable contributing members to their tribal community when they have followed, and in some cases rediscovered their traditional ways. I believe that this is also occurring among the Northern Cheyenne people. Thus, to deprive the Northern Cheyenne of the ability to meaningfully practice their religion is not only repugnant on moral and spiritual grounds, but it may also undercut the efforts of the Northern Cheyenne to overcome existing social ills and build a strong and lasting tribal community. Protecting these sacred sites from desecration is not only about protecting the rights of elders, but it is about the rights and future of our youth. It is inconceivable to me that the ICC could so cavalierly treat these matters of such profound importance.

I urge you to reconsider this project. Take it off the "fast track". Take a real look at all of the alternatives and find one

that will protect the integrity of the Northern Cheyenne religion and the ability of present and future practitioners of that religion to fully and freely practice the age-old and timeless traditions which have sustained and continue to sustain the Northern Cheyenne people from generation to generation.

Thank you for considering this letter.

Sincerely,

Francis Brown
Francis Brown
President

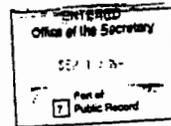
FB:it
C. Steve Brady
Jerry Flute
Medicine Wheel Coalition Board Members



Northern Plains Resource Council

Sigurd L. Strickland Jr.
Secretary
Interstate Commerce Commission
Washington, D.C. 20323

September 3, 1992



RE: Finance Docket No. 30186 (sub No.2)
Tonque River Railroad Co.
Rail Construction and Operation
Ashland to Decker, Montana

Dear Sir:

On behalf of the Northern Plains Resource Council, I am requesting that the Interstate Commerce Commission grant a 30 day extension to the comment period for the Draft Environmental Impact Statement in the above named case.

We are asking for the extension for the following reasons:

1) The proposal dramatically impacts thousands of Montanans and hundreds of Wyomingites, as indicated by the size and scope of public response to the application. NPRC wishes to offer substantive comments to the EIS process, but needs more time to gather data.

2) The ICC hearings generated a large record which provides much valuable data pertinent to the DEIS. Because the transcript won't be available until late September, we feel we need close to a month to read the record and use data from it to incorporate into the DEIS.

3) Throughout the public response period to the application many technical questions have been raised related to:
• the construction and operation of the railroad;
• how landowner conflicts will be mitigated;
• how sacred lands issues will be mitigated; and
• how impacts from rapid and temporary population growth mitigated.

We feel these issues have been inadequately addressed in the DEIS and that it is incumbent upon NPRC to investigate and analyze these issues to insure a complete Final EIS.

4) The DEIS on the 42 mile extension in some cases is substantially different than the FEIS on the original 89 mile Tonque River Railroad on issues that should be quite similar. We are concerned about these discrepancies and need to do in depth analysis on the sources and conclusions. Specifically, these discrepancies include (but are not limited to):
• number and frequency of derailments;
• cost of construction;

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- landowner mitigation measures; and
- the number and type of railroad jobs affected.

5) The DEIS makes several statements of fact with the only substantiation being references to documents listed in the DEIS. These documents are not readily available to NPRC staff and the hundreds of people wishing to read them. We need more time to collect and read these documents.

6) NPRC and its coalition partners were forced to spend much of the month of August preparing for the ICC hearings which was primarily for comment on the Tonque River Railroad Company's application. In reality, opponents were not able to spend such time reading and analyzing the DEIS until after the hearings and more time is needed to insure quality analysis.

7) The entire DEIS was not furnished to all NPRC members who requested it as required by 49CFR Sec. 1502.19(c).

In conclusion, the issues involved in the TRRC proposed rail line are vast and complex. To insure full and substantive response, more time is needed. Please let us know of your decision on this request by Friday, September 11, 1992.

If you have any questions, please do not hesitate to contact us at (406) 246-1154. Thank you. I look forward to your response.

Sincerely,

Teresa Erickson
Teresa Erickson
Staff Director

Northern Plains Resource Council

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PART OF
PUBLIC RECORD

VIA FEDERAL EXPRESS

October 20, 1992

Jana White
Section of Energy and Environment, Room 3214
Interstate Commerce Commission
Washington, D.C. 20423

RE: Finance Docket No. 30186 (Sub-No. 2), Northern Plains Resource Council Comments on Tonque River Railroad Draft EIS

Dear Ms. White:

Presented below are the comments submitted on behalf of the Northern Plains Resource Council ("NPRC") on the Draft Environmental Impact Statement ("Draft EIS") of the Tonque River Railroad Company ("TRRC") on the proposed Ashland to Decker line, Finance Docket No. 30186 (Sub-No. 2). NPRC believes that the Draft EIS is seriously inadequate and requires the preparation of a Supplemental Draft EIS. The Draft EIS is deficient in study and presentation of the existing environment, analysis of alternatives, and preparation and analysis of mitigation measures.

Many of these deficiencies were discussed at the hearings before the ICC several months ago. Comments at the public hearings are incorporated into these NPRC comments, and require investigation and response as do submitted written comments. Further comments are set forth below.

Northern Plains Resource Council is a non-profit, membership based organization in Montana comprised of family sized ranchers and farmers, rural townspeople, small business owners, Native Americans, and other Montanans. NPRC is dedicated to public participation in natural resource and economic issues that impact NPRC's membership. NPRC employs a variety of methodologies including public education, research, and coalition building.

NPRC has been a party to this issue since the original 89 mile rail line was proposed. At that time, NPRC participated fully including experts and legal counsel.

NPRC has identified many deficiencies in the Draft Environmental Impact Statement. The specifics of each are outlined below. Two overriding defects are as follows:

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1. The Draft EIS is predisposed to consider only the most optimistic scenario for coal development and virtually no serious consideration is given to other scenarios. This fact renders the Draft EIS woefully incomplete and deficient. The consequences that could be realized from any scenario other than that presented are of such significance that full and complete consideration must be given to different scenarios.

2. The original 89 mile railroad and the Montco mine, the sole justification for the original 89 miles, were never built. Because certain conditions have changed on the 89 mile railway since 1983, the application for a permit and the corresponding Draft EIS should have considered the entire route. The main justification for the rail line appears to be to serve mines that are already being served. Though a small savings in transportation costs may be realized by some parties, the negative effects on the citizens of Montana are of such magnitude as to in no way warrant the trade-off. The ICC should re-evaluate the proposal in its entirety.

I. THE TONGUE RIVER AREA

Northern Plains Resource Council is concerned about this issue for several reasons integral to the Environmental Impact Statement process:

1. Severe consequences to landowners. Farmers and ranchers living and operating along the Tongue River will be severely impacted by the construction and operation of the railroad. NPRC's membership believes that some impacts to landowners cannot be mitigated. After careful survey, analysis and consideration of realistic mitigation measures, we conclude that ranching will be permanently altered in a negative manner.

2. Impacts on the communities currently dependent upon the existing Burlington Northern rail line. The communities of Forsyth, Colstrip and Hardin, Montana and Sheridan, Wyoming will be permanently impacted by the loss of long term, high paying jobs held by railroader. We believe these communities will not benefit from any new or increased jobs alleged to be created by the construction and operation of the Tongue River Railroad.

3. Strong probability of community turmoil and deterioration due to the loss or displacement of coal mining from the Colstrip area to the Powder River Coal basin. Colstrip, Hardin and Forsyth could experience a double whammy effect by the combined loss of rail and coal mining jobs. Not only would workers be affected, small businesses dependent upon workers and their families would be affected. The loss in tax base and depressed real estate market also add to the downward economic spiral placing a tremendous burden on the families and individuals who remain in the community, many of whom are family farmers and ranchers.

4. Community turmoil on the Northern Cheyenne Reservation.

Dana White
October 28, 1992
Page 4

A. Cultural Impacts to the Ranching Community

The analysis of the social and cultural impacts to the ranching community through which the proposed line, and the already approved 89 mile connector line, may run is inadequate. Additional studies on impacts to specific ranch operations, as well as to the agricultural community as a whole is needed. For instance, the Draft EIS should describe what the social impacts of the railroad on the Tongue River ranching community. What will be the general economic impacts on agriculture in the Tongue River Valley? What will be the impacts on the historic Tongue River ranching culture?

B. Coal Availability

The proposed line is likely to have a significant impact on existing and proposed coal mines in eastern Montana and northern Wyoming. The memorandum from the Montana Department of State Lands must be responded to, and raises questions that can only be properly addressed after additional study, and the opportunity to respond to a Supplemental Draft EIS. This study is enclosed as Attachment A and incorporated herein by this reference.

1. Additional Coal from W. Wyoming: Will the proposed line stimulate additional mining from existing and proposed coal mines in northern Wyoming? What will be the primary and secondary impacts of such development? For example, the social and environmental impacts of increased production from the Powder River Basin in Wyoming must be addressed.

2. Montco and Other Mines: The Montco mine has a permit, but has not been developed, despite TRRC claims that approval of the 89 mile line would allow development. The EIS must analyze the probability of development of this mine because of its alleged dependency on the railroad, and cumulative social, economic, and environmental impacts with, and without this mine. In addition, the Draft EIS discusses the possibility of development of other Montana mines because of the railroad. The probability of such mine development must be addressed. In addition, cumulative impacts of the railroad, together with any and all possible mine development must be studied and presented in a Supplemental Draft EIS.

The individual and cumulative impact of potential development of the Montco, Coal Creek, Ditter Creek, Cook Mountain, C-I Ranch, Northern Cheyenne Reservation, and other mines must be addressed; all potential four lines from the proposed railroad must be specifically identified, and

The influx of temporary construction workers as well as coal miners should the Tongue River coal mines ever be developed, could potentially cause severe turmoil on the reservation. Already strained racial relations could further escalate into an extremely undesirable situation for Native Americans and non-Native Americans.

3. Local Control. Over the last several months the public has demonstrated an unusual expression of opinion against the Tongue River Railroad proposal. Landowners, railroaders, coal miners, Native Americans, small business owners, recreationists and wildlife enthusiasts have come together in an unprecedented manner, leaving aside their differences, to oppose this ill conceived railroad. We believe when this kind of coalition comes together to express like thought it should be taken very seriously by policy and decision makers. NPRC is dedicated to local control. If this railroad were to be built, it would fly in the face of the vast majority of public opinion and therefore be imposed upon the people of Montana against their will.

The Tongue River Valley, and the ranches that lay along the river, form one of the most wild, beautiful, and undeveloped areas in the country. Development of the proposed Tongue River Railroad would create serious adverse impacts to the residents of the valley, as well as to the environment on which the people depend.

II. GENERAL COMMENTS ON DRAFT EIS

The Draft EIS fails to adequately address many impacts that are properly within the scope of required environmental review. Some of the most glaring inadequacies are set forth below.

NPRC was told in 1988 that the Tongue River Railroad was needed to serve the Montco mine and all the other coal mines which were going to be developed in the Tongue River Valley. As you will know, both Montco and the original 89 miles of railroad were permitted, but not one foot of private land right of way has been acquired nor one shovel full of coal mined. Now we are being told that the 42 mile extension is needed to more adequately serve the coal mines. Was the original 89 miles inadequate to do the job, or was the Montco mine used as a carrot at the end of the railroad stick? The DEIS should investigate the possibility that the TRRC principles never intended to develop the Montco mine. As evidence we would point to the fact that on maps supplied to us by Weaco Resources dated July 22, 1992, the proposed extension runs directly across the Montco mine site area. Did the TRRC simply forget there is a permitted mine along the river or do they intend to build the railroad only to reserve portions of it as their coal mining resource? We feel this is just one in a long litany of instances in which TRRC and Weaco resources have misled the public with promises of speculative development, and we again urge the ICC to reconsider the previous 89 mile permit.

Dana White
October 28, 1992
Page 5

potential impacts from such line construction addressed. In addition, construction of a possible connector line to Colstrip must be analyzed. The timing, direct, indirect, and cumulative impacts of such potential mine development must be set forth in a Supplemental Draft EIS.

It appears that the railroad right of way "ROW" will cross the proposed Montco mine. The Draft EIS must explain how this route will impact the potential mine development and operation. Will the railroad location impair the ability of Montco to develop its mine?

2. Impacts on Existing Mines: The proposed railroad would make Wyoming Powder River Coal a closer hauler to upper Midwest coal markets. Based on the lower volume of overburden, and thicker seams, the railroad could make Wyoming coal more competitive than Montana coal in these northern tier markets. This potential impact must be addressed, and the adverse impacts on Montana and Montana communities due to decreased coal production, and mine closure must be thoroughly studied. Impacts on local communities, and the entire state of Montana, because of lost revenue from these mines is a possible impact that must be given serious, and specific, analysis in a Supplemental Draft EIS. There has been testimony presented that states that the creation of the TRRC could bring about a decline of Wyoming coal severance taxes. Wyoming State Representative Jim Perkins in testimony from the ICC hearing in Sheridan, August 21, 1992, stated that there is already an over production of lease coal in this area, both in the State of Wyoming and Montana. Two recent leases that were proposed by the BLS resulted in one bidder for both of them, resulting in a receipt of \$17 per ton to federal coffers. To paraphrase his conclusions, if additional coal continues to be developed with the incentive coming from the utilities in the Midwest and on the West Coast, we are creating a buyers market and therefore receive less money for federal resources. Severance taxes in both Wyoming and Montana are based on a percentage of the value of coal when it is put into the coal car. The Draft EIS did not analyze this possibility in any way. The Draft EIS needs to analyze this secondary impact.

C. Community Social and Economic Impacts

The testimony at the ICC Hearings identified significant social and economic impacts to railroad communities as a result of the proposed line. Job, tax, social, infrastructure, and demographic impacts caused by shifting Montana and Wyoming coal shipments to the proposed route were not adequately addressed in the Draft EIS.

Please explain with specificity, the difference between the ICC's and TRRC's job loss estimates, and the higher figures presented during the ICC Hearings. Please identify non-operator, as well as operator, railroad job losses for Sheridan, Fortuin, and other communities. What are the total population impacts as well as the impacts to fire, schools, tax base, housing, and all communities impacted by the line?

D. Prior Tongue River Railroad Proposal and EIS

1. Tiering: While NEPA recognizes that an EIS may "tier" off of existing documents to prevent duplication of effort, the Draft EIS takes this approach to such an extreme that inadequate information is available to the public.

Please identify with specificity all new data that has been compiled for wildlife, aquatics, fisheries, soils, and vegetation, not utilized in the 89 mile EIS. What efforts were made to determine whether existing data was too old or inadequate?

2. Discrepancies: Several discrepancies exist between the Final Environmental Impact Statement for the first 89 miles and the DEIS for the 41 mile extension. Because the DEIS frequently refers to the 1985 Final EIS for supporting materials, it is appropriate to list some of the discrepancies between the two documents.

The 1985 Final EIS states, "The contractor would fence the right-of-way and would clear and grade the track area in 3- or 6-mile segments... with such activity confined generally to the actual track area." (pg.37). On the 41 mile extension, does the TRRC intend to clear and grade the entire right-of-way before the actual rail line construction begins, thereby greatly influencing the amount of erosion, as the DEIS implies?

Page 2-7, Section 2.2.7 Social and Economic

Why does the 1985 Final EIS list the population of Rosebud County in 1980 as 11,278 (pg. 21) while the DEIS says the 1980 population of Rosebud County is 9,899?

Page 3-2, Section 3.1.1 Construction

Does the TRRC really plan to build culverts to withstand a 100 year flood event (1985 Final EIS pg. 37) on the original 89 miles, and build culverts capable of withstanding a 25 year flood occurrence on the extension?

How does the TRRC plan to construct the entire 131 mile rail

the 1985 Final EIS. It is evident that TRRC is confused about some of these figures. The discrepancies on crew sizes, derailments and accidents will significantly impact the local population. We hope these inconsistencies will be made clear in a supplemental EIS.

TRRC has never believed the poor predictions for coal development in the Tongue River Area. With that in mind, we would like to point out one final discrepancy, a quote from the 1985 Final EIS on pg. 46 which was omitted from the DEIS. "The nature of mine development in the Tongue River region is extremely speculative."

Discrepancies and Analysis of Unmitigatable or Difficult to Mitigate Impacts

1. Fire

Neither the 1985 Final EIS nor the DEIS regards fire hazard as an unmitigatable impact, yet much of the testimony from landowners and railroaders at the August 19-21 hearings make convincing arguments that increased fires will be inevitable. Because the railroad itself will pose a barrier that increases the length of time people and equipment can respond, and because heavy coal trains going down hill and braking frequently will create sparks testimony has shown that many more fires that are more difficult to fight will burn.

2. Ranching Operations and Lifestyle Altered

Ranching in the area will change permanently. The natural flow of livestock and wildlife from the river to pastures will be altered permanently. Both wild and domestic animals will be killed on the tracks. A rancher could be in a perpetual position of attempting to document kills and then seeking compensation from the railroad. Even with mitigation measures such as those requested in landowner comments, ranching on the Tongue River will never be the same and will be much more difficult, the value of ranches for either agricultural production or recreation will be substantially reduced. Again neither EIS lists altered ranching operations as unmitigatable impacts. As documentation of this fact we enclose Attachment B which is a letter from a rancher in Wooding who has had to live with a railroad on his property.

3. Value of Land

The increased difficulty of ranching with a rail line running adjacent to the water source renders it undesirable to prospective buyers interested in continuing agricultural production. Disturbance from noise, pollution and impacts to wildlife renders the property less desirable for recreational purposes. Please

line in three years when plans for the original 89 miles called for a four year construction period (1985 Final EIS pg. 28)

Does the TRRC plan to use a maximum construction work force of 728 as stated in the DEIS, or the 378 which is called for in the 1985 Final EIS (pg. 28)? Please describe environmental, social and economic impacts of these differences.

Page 3-8 - 3-9, Section 3.1.2 Operation and Maintenance

The 1985 Final EIS states, "Each coal train operated by the TRRC would consist of 2 3,000-horsepower diesel locomotives, 103 coal hopper cars, and 1 caboose," and would run at 37 or 38 miles per hour (pg. 29). Furthermore, the Final EIS says the trains would operate with three man crews and depending on the number of trains operating, 14 crews would be necessary operating 358 days per year. The DEIS says, "Each TRRC coal train would be comprised of 2 3,000-horsepower diesel locomotives and 112-125 coal hopper cars," and they are now running at 50 miles per hour. The DEIS also states they would now need only 10 two-person train crews operating 363 days per year. Does the TRRC intend to build a drop-off station somewhere near Ashland where they remove the extra locomotive, 7-14 coal cars, the caboose, and one member of the train crew?

Page 4-40, Section 4.4.2.1 Grade-Crossing Accidents

Why, when using an equation developed for the 1985 Final EIS, does the DEIS say, "accidents would occur at a rate of not more than one every 180 years," when the 1985 Final EIS states there will be 7.6 by the year 2011 (pg.99)? Please provide and analyze and explanation of these discrepancies.

Page 4-42, Section 4.4.2.4 Derailments

How does the TRRC justify the figure in the DEIS of 3,459 derailments by the year 2011 when the 1985 Final EIS says by the year 2011 there will be 188 derailments (pg.181)? Please provide and analyze and explanation of these discrepancies.

Page 4-45, Section 4.5.1 Construction

Why in the era of increased efficiency of combustion engines did the rate of diesel fuel consumption to move one cubic yard of material go from .25-.75 in 1985 (Final EIS pg.88) to .15 in the DEIS? Please provide an analysis and explanation of these discrepancies.

Although huge sections of the DEIS were copied verbatim from

document such reduced valuation for all landowners crossed by the entire 131 miles of rail line.

4. Socioeconomic

There will be unmitigatable impacts to the social and economic fabric of Rosebud, Big Horn, Custer, and Sheridan Counties. The "bust" effect that the loss of coal, railroad and post-construction jobs will have in these communities will leave lasting burdens to remaining taxpayers. Public attitudes such as community pride, desire to live in the community and trust in neighbors can be severely affected for long periods of time. Has the ICC or the TRRC done any sociological studies to assess this?

5. Safety

Railroad traffic, especially in a remote region, will almost certainly mean loss of human and animal life no matter how careful all parties are. This loss of life is unmitigatable. Please provide an estimate of how many human and animal life losses are expected each year by the railroad.

E. Access Road

Mention is made that there will be an access road which could provide fire fighting access, as well as access for construction workers. The Draft EIS is deficient in totally ignoring potential impacts from this access road. The Tongue River Valley is an unusually weed free area. The project, and its associated increase in train and vehicle traffic, is likely to provide increased sources of weed infestation. What weed control and dust control measures will be used on the road? How will the road be fenced? How will access be controlled on this road? Where will the access road be located? Will this road require culverts?

F. Construction Impacts

Please identify detailed fencing plans for construction and operation of access roads and for the rail line. Construction camps are likely to have a significant impact on human health and the environment, so specific locations of all construction camps must be presented. Where is each proposed construction camp? What will be the rules of conduct in the camps, if any? How will traffic, dust, and litter impacts from these camps be controlled? Please identify all access roads necessary to provide worker and machinery access to rail line construction. How will TRRC guarantee that cattle and ranch operations will not be disrupted during rail line construction? For example, what weed and dust control measures are required for access road construction and maintenance?

G. Fire

A-43

1. Grade Crossings: The Draft EIS is deficient because specific access points to fight fires along the entire ROW must be identified. A fire fighting mitigation plan must be incorporated into a Supplemental Draft EIS that ensures public comment and review.

2. Caboosees: The EIS on the 89 mile line commits to using caboosees which will aid in fire control. It is not clear whether the 42 mile line will require caboose use as a mitigation measure. The possible inconsistencies in the two lines must be rectified. NRC urges consideration of a caboose requirement for the entire line, with immediate fire notification system established.

3. Access: The railroad will cut off much of the grazing land from the river, and from reasonable access, especially west of the river. Please identify, with specificity, an access point that will ensure that fire fighters can reach all areas within five minutes. The railroad will also limit access to some of the west side of the river. Where are the bridges, and what are the access points, to fire fighting on the west side of the Tongue River? The DEIS state that state-of-the-art fire suppression will be used, what exactly is state-of-the-art fire suppression?

N. Cumulative Impacts

The Draft EIS must address the cumulative impacts of the railroad, access road, and all mining operations discussed in testimony or the Draft EIS. Reliance on earlier EIS is only adequate to the extent that the timing, location, environmental, and social and economic impacts of the railroad and other related impacts have been fully addressed.

I. Disruption to Utilities

Please identify the ROW for all utilities in the Tongue River Valley. How will these be impacted by railroad construction? Who will pay for relocation of the electric and phone lines? Other utilities? What mitigation measures are proposed to minimize utility disruption during railroad construction? Will the relocation or disruption of utility lines cause the need for a rate increase to utility customers. Have the utilities been contacted? When? What was the response?

J. Social and Economic Impacts

1. Impact Assistance Funds: What up-front funds are available to communities and impacted ranchers to mitigate

and known burial sites along the proposed 42 mile line? What measures are proposed to prevent impacts to each site?

K. Land Valuation

The impacts to each ranch must be studied, and mitigation measures must reflect the diminution in value of each operation, not just a per acre valuation. Severance and isolation of parcels must be studied, and each ranch operation made whole. For instance, if a bull pasture is rendered useless by the railroad, then TRAC must provide adequate compensation to enable the landowner to continue his operation.

As you know, NEPA requires an EIS to analyze short term uses versus long term productivity, as well as a thorough study of irreversible and irretrievable commitments of resources. 42 U.S.C. 4332(2)(C). As has also been pointed out, significant coal resources underlie much of the private and state land that would be crossed by the 89 mile line and the 42 mile line. Please identify all coal seams that would be crossed by these lines. In addition, please state with particularity the values of coal, by property owner, and under each quarter section crossed by the line, as well as the amount of such coal that the rail line would render irretrievable. This information is critical in order for the ICC to balance resource commitments, as well as for property valuation that could significantly impact ROW alignment.

Please identify with specificity the expected decrease in livestock or crop production that each landowner crossed by the rail line may incur.

O. Fish, Wildlife, and Vegetation Impacts

The cumulative impacts of the 89 mile line and the 42 mile line to game and non-game wildlife populations in the Tongue River Valley must be fully addressed. The fawning grounds, and the summer and winter range of mule deer, white tail deer, antelope, and other species must be identified. All migration routes should be identified, so specific mitigation measures can be developed as part of the EIS.

Was the Draft EIS prepared without gathering new data on fish and wildlife? Has the project area, and has the ROW, been surveyed for the presence of any wildlife threatened and endangered species in the past ten years? If so, please describe, who, when, and where such survey occurred.

Please provide an inventory of all vegetation that occurs along the ROW. Has any ground survey ever been conducted along the

line construction impacts? If coal lease: mines are to be used how will other competing uses be affected? Has TRAC done any analysis of this? The ICC should require TRAC to mitigate all construction impacts, and a fund to ensure that all social, cultural, and environmental impacts can be adequately be addressed during the construction phase.

2. Life Expectancy: What is the life expectancy of the proposed railroad if Montana mines go out of business because of increased competitiveness of Wyoming coal? What if additional Montana mines are brought into production?

K. Reclamation

The Draft EIS does not address bond requirements, nor a reclamation plan, for the proposed railroad. What will be the impacts of TRAC going out of business without adequate reclamation bonding or reclamation requirements? The Supplemental Draft EIS should present a reclamation plan for public review and comment. Elimination of the bed, revegetation, fencing maintenance and dismantling should all be addressed. The reversal of the right of way to its original contour and vegetative structure should also be addressed.

L. Paleontological Resources

The Draft EIS does not provide an adequate analysis of the paleontological resources along the line. What paleontological studies have been conducted? Please list all paleontological resources located along the railroad ROW. What mitigation measures have been proposed and required to ensure fossil identification, excavation, and preservation?

M. Historical and Archaeological Impacts

The proposed railroad traverses an area rich in historical and archaeological resources. Testimony at the ICC hearings produced evidence of several burial and battle sites that may be directly impacted by the proposed railroad. These locations must be identified and studied before a particular ROW is selected, and mitigation measures are identified. Proceeding with a Draft EIS that fails to even identify such resources, and defer their study to the future, subverts the obligation under NEPA to identify the existing environment and impacts prior to selection of a preferred alternative.

Where are all of the battle grounds potentially impacted by the 89 mile line? Have the sites identified by the Rosebud Planning Board in 1982 been studied? Where are all battle grounds

ROW and insect areas to determine whether any threatened or endangered plants occur? What plants that are important to tribal gathering occur along the ROW? Where are these plants located? What mitigation measures are necessary to assure that such vegetation is not adversely impacted?

An example of the inadequate nature of the study of wildlife impacts is demonstrated by the testimony of TRAC consultant Allen Howell at the Miles City ICC Hearing. Mr. Howell denied that the railroad would cause a problem to pronghorns in the area, and claimed that the railroad would not impede turkey access to water because of water availability in draws. August 28, 1992, Miles City ICC Hearing Transcript at 251-52. Please identify each draw that has adequate water to avoid adverse impacts to wild turkeys. Please identify each pronghorn migration route at which the proposed fencing will not cause any adverse impacts to pronghorns. As demonstrated by testimony and other comments, there are a number of migration routes, and dry draws, that would be cut off by the proposed railroad. A Supplemental Draft EIS is required in order to adequately, and accurately, study potential wildlife impacts and mitigation plans.

Underpasses and/or overpasses must be specifically designed to accommodate migrating big game populations. Fencing that will accommodate landowners' needs, as well as wildlife populations, must be discussed. What fence will prevent cattle from getting into the ROW, and still allow pronghorn, deer, and turkey passage? How many deer, antelope, and turkey migration routes will be crossed, what will be the impacts, and how will each such crossing be mitigated? For instance, how will pronghorns cross the line? How many antelope are expected to be lost because they get in the ROW, and run over by trains? How will this impact the local and regional wildlife populations?

The study of endangered species is patently inadequate. Testimony at the ICC hearings identified three bald eagle nests in a three mile stretch, not the one discussed in the Draft EIS. Testimony of Bill Huegraves, August 21, 1992, Sheridan ICC Hearing at page 118. A complete inventory of all bald eagle nests, and appropriate mitigation measures, must be included in a Supplemental Draft EIS. Eagle winter range should be identified, and mitigation measures proposed. Furthermore, eagle roosting trees must be identified, as well as their feeding range. Prairie dog populations have increased along the entire route, according to land owners in the area. Black footed ferrate dine on prairie dogs and therefore the probability of their presence exists. Has the TRAC studied and analyzed the potential impact to the ferrate?

Please identify, with specificity, the winter range of all

game and non-game animals that utilize the Tongue River Valley. Please identify the migration routes of all game and non-game animals that utilize the Tongue River Valley. What specific mitigation measures, such as fencing, routing, grade crossing, and underpasses, are available to mitigate damage to each range or migration route?

In addition to the issues that the Draft EIS recognized as requiring updating in the 1983 TRRC EIS at page 1-7, the current Draft EIS must update information on wildlife winter range, threatened and endangered plant and animal species, and game migration routes.

Wildlife surveys must be conducted as part of the Draft EIS process, not immediately prior to construction, when the information will not be available to public and the ICC.

Testimony was presented at the Sheridan, Wyoming hearing August 21 by Roger St. Claire detailing how the recreational value of land has been diminished with the threat of the railroad. A letter from the real estate firm he works for is enclosed as Attachment C. The Draft EIS should quantify the devaluation of land on the Tongue River as a result of the proposed railroad.

P. Blasting

The Draft EIS must address areas that must be blasted during rail line construction. What will be the impacts on the Tongue River Dam, on Birney, on schools, and on structures? What mitigation measures will be required to minimize these impacts? Blasting will also disrupt sacred Native American ceremonies. How will this impact be mitigated?

Q. Coal Dust

How many tons of coal will be lost along the 89 mile line annually, and during the proposed life of the railroad? The 42 mile line? What percentage of the coal dust will constitute PM-10? Where will this dust go? What will be coal dust impacts on agriculture? On fish and other aquatic life? On humans? On water?

R. Permit Expiration Date

The TRRC and its principals have presented a history of speculating, and not acting on their permits. When will each permit held by TRRC and Montana expire? Since TRRC has claimed that the current action is an amendment to its earlier proposal, the ICC should require that the certificate of public convenience

was circulated. Route changes were discussed and addressed as part of NEPA review. However, landowners reviewing the present Draft EIS do not know exactly where the line may cross their property, what access they may have to their property, and how their ranching operations may be impacted.

At the Miles City ICC hearing, Mike Gustafson testified as follows:

We have designed this railroad Phase I, we've identified every possible underpass, and the design and configuration, the lay of this particular rail. August 29, 1992, Miles City ICC Hearing, pp. 366-67.

Please identify, with specificity, every possible underpass, the design configuration of the 42 mile route, and the exact lay of the line. This presentation should be made as part of preparation of a Supplemental Draft EIS.

It is unconscionable that underpass design and configuration have been developed, and they have not been shared with impacted ranchers. This is also a fatal deficiency in a Draft EIS which is obligated to present adequate information on impacts and mitigation measures for public review and comment. This exacting level of detail claimed to be in TRRC's possession must be made available to all impacted landowners, discussion of alternative routes must be encouraged, and the impacts and mitigation measures addressed in the Supplemental Draft EIS.

V. Additional Direct Impacts

1. County Road: Are county roads adequate to handle the increased traffic? Who will pay for road upgrades? What are the environmental impacts of road upgrades?

2. Noxious Weeds: There has been extensive testimony about potential impacts from noxious weeds. Mitigation such as providing sterilized ballast, and weed-free topsoil for road and rail line construction must be addressed. The mitigation plan must ensure that landowners will not be subjected to weeds transported from the railroad ROW. What herbicides, mechanical or other means will be used to control weeds? When will they be applied? What areas on and near the ROW will TRRC be responsible for maintaining weeds? Who will be responsible for controlling weeds outside the ROW that derive from the ROW? How will TRRC be held financially accountable for costs of weed control, and damage, caused by weed infiltration? There must be a presumption that weeds located on or near the ROW are caused by the railroad, and are

and necessary on the 89 mile line earlier after 1997 if TRRC fails to develop the line as claimed in its earlier application. The speculative nature of this railroad must end. As long as there is any chance of the railroad being built at some unknown point in the future, affected landowners are burdened with a cloudy title over their land. If public confidence is shaken with the prospect of lost railroad and coal mining jobs, real estate in Forsyth, Hardin, Colstrip, and Sheridan will be depressed.

S. Water

Testimony has been submitted that no industrial water may be available for TRRC. Does TRRC have any right to water? Exactly where would TRRC obtain the water necessary for construction and dust mitigation? How much water is needed, and what periods of time is withdrawal necessary? What would be the specific impacts of such withdrawals? What other non-aqueous dust suppressants are available? EPRC asks that non-toxic dust suppressants be studied and used to minimize impacts to ground and surface water.

A Supplemental Draft EIS must be prepared to identify the water needs and availability relating to the proposed line, as well as present measures necessary to mitigate such withdrawals.

T. Tongue River Reservoir

The federal government has authorized funds to repair and enlarge the Tongue River Reservoir. This new information must be addressed in a Supplemental Draft EIS. In particular, the lack of water availability during the summer months as the reservoir is drawn down for repair must be analyzed. Cumulative social, economic, and environmental impacts of dam repair and railroad construction must be addressed. Potential adverse impacts of railroad operation on the Reservoir, and on the recreational uses of the Reservoir, must be thoroughly analyzed. For instance, would ground vibration from railroad operation and blasting potentially impact the dam's structural integrity?

U. Impacts to Ranch Operations

The analysis of impacts of the proposed railroad on individual ranch operations is inadequate. Some of the most significant impacts of the proposed line would be to ranching operations, yet the degree of analysis and study of the existing operations, and potential impacts, is less than most portions of the Draft EIS.

In the EIS on the 89 mile line, individual landowners were contacted in the EIS process, and line location, grade crossings, underpasses, and other matters were addressed before the Draft EIS

the railroad's responsibility.

3. Slow Orders: The Draft EIS must address specific areas in which Permanent Slow Orders will be required. Birney and school bus crossings should have adequate slow orders that are required conditions of any ICC railroad approval.

4. Litter: The Draft EIS should contain a litter mitigation plan.

5. Aesthetics: Despite attempts in the Draft EIS to denigrate the aesthetics of the Tongue River Valley, there has been ample testimony regarding the importance of aesthetics to local residents, and people visiting the area. The rail lines' impacts to aesthetics must be addressed, and mitigation measures considered.

V. Noise and Vibration

Noise and vibration impacts are a significant impact of the proposed railroad that are not adequately addressed in the Draft EIS. This is especially important due to the cultural and spiritual requirements of the Northern Cheyenne Tribe, and the unique rural character of the area. Ruffler systems and noise buffer control measures must be analyzed throughout the rail line system. Noise and vibration impacts may be significant around Birney and other structures. These should be specifically addressed, and specific mitigation measures for all towns and structures presented in a Supplemental Draft EIS. What is the loss of recreational land value due to increased noise as solitude will no longer be a characteristic of the area?

X. Water Quality

The Draft EIS does not adequately address potential impacts to the water quality of the Tongue River and its tributaries. Montana has a water quality statute that prohibits any degradation of water quality by new pollution sources. MCA 75-5-302. What specific mitigation measures have been proposed that will guarantee that no degradation to Montana's high quality waters will occur? Mitigation measures along the portion of line that is removed from the river must be considered, as long as potential sediment or cargo spills could reach the river or its tributaries. Please identify all tributaries and river bed locations as well as upland sites, where construction could produce sediment discharges.

Y. History of Railroad Activity in the Tongue River Valley

There have been many efforts to establish a railroad in the Tongue River Valley. A complete history of these efforts is appropriate, to enable the decision-makers an opportunity to factor abandoned rail line efforts into any decision. Please describe, with particularity, the history of the abandoned line including discussion of the lack of rail line reclamation and the associated impacts on ranching operations and wildlife. Also, please include BNSF and any other rail carrier's efforts to develop a rail line in the Tongue River Valley. Finally, a complete history of TRRC's efforts to construct coal mines, and a railroad, must be fully set forth. Why have each of the prior efforts to establish and/or maintain a railroad in the Tongue River Valley failed? Why is TRRC's current proposal likely to produce a different result?

2. Social, Economic, and Culture Impacts on the Northern Cheyenne Tribe

The Draft EIS is inadequate in its analysis on the spiritual, cultural, and social and economic impact on the Northern Cheyenne Tribe and Tribal members. Deferring analysis of impacts to a point in time after the Draft EIS is an impermissible attempt to avoid NEPA requirements. These impacts must be presented in a Draft and Final EIS so that the public may comment on the plan and mitigation measures, and in order that the ICC will have the information available before making a major decision significantly affecting the quality of the human environment.

Specific impacts to cultural and spiritual sites were not addressed in the Draft EIS. Where are traditional Northern Cheyenne flora and fauna gathering sites potentially impacted by the proposed railroad? What mitigation measures have been proposed?

AA. Alternatives

1. No Action Alternative: The treatment of the no action alternative in the Draft EIS is inadequate. A discussion of the impacts of having no rail line in the Tongue River Valley must be addressed. In addition, the impacts of construction and operation of the 69 line, without the 42 mile line, is also needed for a true "no action" discussion.

2. Alternative Coal Transportation System: The EIS prepared by the ICC for the Chicago & North Western line into the southern Powder River Basin analyzed coal slurry alternatives. The potential of CO₂ or even water, coal slurry lines should be a part of any coal transportation EIS. Alternative transportation systems such as a conveyor system to the inland terminus of the BN line should also be

requiring at least two additional crossings.

There has been a significant increase in prairie dog populations along the ROW, land use and structure locations we have been moved, and pelicans are more abundant than previously stated. These comprise a very short list of changes. Under NEPA laws and the CED regulations, these, and other, changes require preparation of a Supplemental Draft EIS. 40 CFR §1502.9(c).

III. SPECIFIC COMMENTS ON DRAFT EIS

Page 1-5, Section 1.2 (Supplemental Environmental Studies): Since the ICC views the present EIS as supplementing earlier environmental review documents, the Draft EIS must provide updated information on all environmental and human impacts. Changes to land use along the entire rail route, as well as updated wildlife studies, social and economic analysis, and Native American and rural lifestyle cultural analysis must be presented.

Page 1-5, Section 1.2 (Tiering): NEPA and the CED regulations recognize the ability of an EIS to tier off of earlier documents. However, this does not eliminate the responsibility of the EIS to provide readily available information, nor does it provide license to rely on stale and outdated information. Please provide a complete list of all tiered information, and the nearest location of all such documents to the impacted ranching and Northern Cheyenne communities, as well as impacted communities of Sheridan, Forsyth, Hille City, Birney, and Birney Village. Please provide a complete list of all new studies undertaken to update the tiered material.

Page 1-6, Section 1.2 (Consultation): NPRC notes that the EIS consultants have undertaken consultation with affected Native Americans. Please provide documentation of all such consultations. In addition, please provide documentation of all consultations with affected landowners created by the proposed line. Why were Native Americans consulted, but not ranchers directly created by the line? Many Native Americans who testified at the Law Deer hearing claimed that no one ever talked to them nor did their elected leaders ever consult tribal members as a whole on this issue.

Page 1-8, Section 1.3.1 (Traffic): Please document potential coal traffic from all Wyoming Powder River Basin sites that could potentially use the Tongue River railroad.

Pages 2-5 through 2-6, Section 2.2.5.1. (Vegetation): Please specifically identify all plant species impacted by the proposed line. Please describe in detail all studies conducted on the ROW

addressed.

3. Alternative Rail Lines: The Chicago & North Western line across Nebraska provides an alternative route to the upper Midwestern coal market. This alternative route should be studied in a Supplemental Draft EIS.

4. Alternative Routes: The Draft EIS only envisions one alternative route - the 4 mile alternative. While NPRC is not advocating location of any rail line on the Northern Cheyenne Reservation without Tribal and Tribal member approval, nevertheless the possibility of siting portions of the rail line on the west side of the Tongue River has not even been studied. Furthermore, alternative routes to avoid schools, burial sites, wells, and wildlife winter range or migration routes have not even been addressed. This failure to consider any number of reasonable alternatives in the Draft EIS renders the document deficient under NEPA.

Additional study of the 4 mile connector line must be undertaken. Wildlife and water quality impacts of this connector have not been adequately addressed. In addition, what type of braking systems are necessary to control trains? What is the derailment projection for this section of the route?

AB. 69 Mile Line and Connector Line

The proponents of the railroad claim that the proposed extension line is merely an amendment to their earlier, 69 mile proposal. Since the projects are directly linked, and interconnected, the environmental impacts of the entire line must be studied, and presented for public review in a Draft EIS.

TRRC recognizes the significant changes that have occurred since they applied for the 69 mile line. Victor Weed, in his verified rebuttal statement, acknowledged that, "conditions have changed over the past 8 years and direct comparison of the 1983 and 1991 tonnage estimates is misleading and meaningless." Wood, Verified Rebuttal Statement at p. 17. Thus, the ICC must reconsider its approval of TRRC's certificate of convenience and necessity for the 69 mile line, and review the entire line based on current conditions.

Since the Final EIS in Finance Docket No. 30186 came out on August 23, 1983, many changes have taken place to the environment in the lower Tongue River Valley. For instance the State Fish Hatchery is not the same, and potential impacts would be different. The county road in Section 16, T. 1 S., R. 44 E. has been saved.

searching for threatened or endangered plant species.

Pages 2-7 through 1-10, Section 2.2.5.2 (Wildlife): The Draft EIS acknowledges that 20 miles of the proposed route have not been surveyed for wildlife. This failure to identify resource impacts must be addressed in a Supplemental Draft EIS. Please identify specific locations of fawning areas, summer range, and winter range in the Tongue River Valley for all impacted game populations. Also, please identify all game and non-game travel and migration routes. NPRC disagrees with the Draft EIS claim that white deer are "essentially non-migratory."

Thorough, on-the-ground, studies for threatened and endangered species must be included in a Draft EIS. Based on public comments at the ICC hearings, the EIS study team failed to identify at least three bald eagle nest sites in one three mile stretch that would be impacted by the railroad. Comprehensive studies of peregrine falcons and blackfooted ferrets must be made before the ICC renders a decision on the proposed line. Otherwise, TRRC would have approval of an action that adversely impacts threatened and endangered species. Such an action directly violates both NEPA and the Endangered Species Act.

Pages 2-15 through 2-22, Section 2.2.7 (Social and Economic): Please provide detailed information on the directly impacted populations, the ranchers along the Tongue River, residents of the Tongue River communities, the members of the Northern Cheyenne Tribe, and railroad and mining facilities potentially impacted by the proposed line.

Pages 2-29, Section 2.2.11 (Cultural Resources): The ICC claims that it is negotiating a "Programmatic Agreement" between BIA interested parties concerned with historical, cultural, and spiritual resources. Such an agreement cannot replace the obligation under NEPA of identifying such resources, as well as mitigation measures, before the final EIS is prepared. Furthermore, neither NPRC nor its members have ever been contacted to participate in such a document. What efforts have TRRC and the ICC made to identify and protect ranching history and culture? This serious deficiency requires preparation of a Supplemental Draft EIS.

Page 2-39, Section 2.3.1. (Northern Cheyenne): Please identify the location of all plants of special importance to the Northern Cheyenne Tribe located along the ROW. What alternative routes are available to avoid impacting these plants? In addition, please provide documentation that all spiritual and cultural sites of importance, as well as battle and burial sites, have been identified, and satisfactory mitigation measures, including

alternative route selection, have been undertaken.

Page 3-8, Section 3.1.1. (Reclamation and Vegetation): Please identify the specific plant species to be used in reclamation, and guarantee that ballast, top soil, and vegetation seeds will be weed free.

Page 3-16, Section 3.4 (No Action): As discussed above, the No Action alternative is inadequate.

Page 4-2, Section 4.1.1.1 (ROW): The Draft EIS must analyze severed parcels based on the existing, and future, ranch operation as a whole. For instance, water availability, potentially irrigated land, potential for snow drifting, and ease of cattle and machinery passage all will have an impact on whether a particular parcel is severed. Please identify all potentially severed parcels along the ROW.

Page 4-5, Section 4.1.1.1 Right-of-Way: TRRC's preferred route would run parallel to the Tongue River Reservoir State Recreation Area and would render it virtually worthless for recreational purposes. The number of acres acquired by the TRRC or their rebuilding of access to the area is irrelevant. 32,000 people visited the area in 1989 and the impacts of the railroad to it need to be addressed.

Page 4-7, Section 4.1.2. (Operation and Maintenance): As presented above and at the public hearings, NPRC vigorously objects to the claim in the Draft EIS that fires will be "small, rarely exceeding 5 acres." A detailed fire prevention plan, guaranteeing immediate access to the entire Tongue River Valley, including the east side, must be prepared and circulated for public comment in a Supplemental Draft EIS. What exactly is the meaning of state-of-the-art fire suppression?

Pages 4-8 through 4-29 (Social and Economic Impacts): As discussed at the ICC hearings, and above, NPRC believes that the social and economic analysis is fatally flawed. For example, please provide detailed information concerning social and economic impacts to Powder River County. Rather than reiterate the deficiencies in the Draft EIS, NPRC respectfully requests that a Supplemental Draft EIS be prepared that adequately analyzes these impacts. All of the questions and comments raised in Sheridan, Hiale City, Forsyth, and Lane Deer as well as in the written comments by these not able to attend must be addressed.

Page 4-28, Section 4.2.4.3 (Fiscal Impacts): Please justify the assertion that capital and operation and maintenance expenses addressed in the 1993 TRRC EIS can be reduced in direct proportion

to projected population decreases. Many capital expenditures are not related on a one-to-one ratio to population fluctuation. This statement is seriously flawed, and must be addressed in a Supplemental Draft EIS. Also, please provide specific details concerning costs that will be incurred by impacted Montana and Wyoming counties.

Page 4-28, Table 4-15 (Coal Tax Revenue): There has been such leeway regarding the possibility that the proposed railroad will actually decrease the number of mines, and the coal tax revenue, in Montana. This potential scenario must be thoroughly studied. Please provide projected coal tax revenue if all Montana mines are closed down. Please provide projected coal tax revenue if all mines except the Decker Mines and Spring Creek are closed. NPRC contends that the failure of the Draft EIS to mention, much less seriously discuss, the possible shift of coal production to less expensive Wyoming mines, necessitates preparation of a Supplemental Draft EIS. Without such additional study, the ICC will not be able to make a fully informed decision as required by NEPA.

Page 4-29, Section 4.3 (Transportation): Please identify all road crossings, and the type of traffic warning and safety devices that will be required of each. Because the county road along the 89 mile line has been severed, the Draft EIS should address all crossings along the entire ROW. Also, please identify the average, and potential maximum, delay at each crossing.

Page 4-33, Section 4.3.2.1 (Mitigative Measures): Estimate of Crossing Improvements: The DEIS says that flashing lights will be installed at railroad crossings by the year 2018. We feel this is totally inadequate. NPRC feels that all railroad crossings should be equipped with crossbucks and these should be installed immediately when the crossing becomes open to through traffic.

Pages 4-38 through 4-44, Section 4.4 (Safety): TRRC should be required to fund fire and emergency service protection sufficient to address potential safety threats caused by the railroad. NPRC requests that the ICC study, and consider requiring TRRC to maintain adequate ballicorder services to provide fire and emergency relief at least at the current level of response.

Pages 4-52 through 4-62, Section 4.6 (Tongue River Dam): As discussed above, a Supplemental Draft EIS must be prepared which addresses timing of construction impacts, and water availability, caused by the planned renovation of the Tongue River Dam.

Page 4-64, Section 4.7.1.1 (Soil Loss): The Draft EIS must identify specific construction practices, such as immediate application of mulch, netting to hold mulch in place, and continual

water application for dust suppression, that can control dust and stabilize soils. In addition, please demonstrate that dust from railroad construction will not violate the Northern Cheyenne Indian Reservation's Class I air quality. What modeling has been conducted to establish that no air quality violations will occur? NPRC believes that specific mitigation plans must be presented in a Draft EIS, and approved by the ICC.

Page 4-67 through 4-77, Section 4.8.1 (Wetlands and Water Quality): Please identify precisely the acreage of wetlands that would be lost by railroad construction. In addition, please identify the specific locations of proposed wetland mitigation. The Draft EIS is intended to provide a reasonable disclosure of all potential impacts of the proposal, and the wetland destruction and mitigation discussion in the Draft EIS fails to provide biologists and landowners with such information.

Pages 4-71 through 4-82, Sections 4.8 and 4.9 (Sediment Increases): The Draft EIS identifies increased levels of sediment pollution to the Tongue River. As discussed above, this would violate Montana's nondegradation law which prohibits new sources of pollution that fail to maintain the existing high quality of Montana's waters. RCA 875-3-093. The ICC cannot approve a project as meeting standards of public convenience and necessity if it is in violation of state law. NPRC respectfully requests that a Supplemental Draft EIS be prepared which identifies and requires adequate mitigation measures to ensure that there will be no degradation to the Tongue River or other Montana waters from this new pollution source.

Page 4-82 through 4-84, Section 4.10.1.1 (Vegetation): Please identify specific plant species in the proposed ROW. A field search for threatened and endangered species must be conducted as part of the environmental review process, not afterwards. Specific vegetation plans, including proposed plant species, should be included in the Supplemental Draft EIS.

Pages 4-84 through 4-98, Section 4.10.1.2 (Wildlife): As discussed above, the Draft EIS does not provide adequate information on potential wildlife impacts. Please identify all winter range, foraging areas, travel and migration routes and water sources for each game species found in the area of the proposed railroad. In addition, the "Biological Assessment" identified at page 4-87, should be conducted before the Draft EIS, in order for public input and consideration by the ICC in its deliberation of the proposal. The lack of wildlife information provides overwhelming reasons for preparation of a Supplemental Draft EIS to correct these, and other, deficiencies. It must also address what type of fence the TRRC proposes to use along the right of way which

will permit the migration of deer and antelope yet still prohibit the wandering of livestock.

Page 4-98, Sec on 4.10.2.1 (Dust and Vegetation): Please provide a detailed plan, identifying which herbicides may be applied, when they may be applied, and potential impacts. Close coordination and cooperation with landowners is critical in any weed control operation. NPRC respectfully requests that the ICC and TRRC present any modeling or studies that have been conducted which support the claim that coal dust would not constitute a problem. In particular, please demonstrate that coal dust will not provide localized impacts, particularly close to loading areas.

Pages 4-93 through 4-97, Section 4.11 (Air Quality): What are the potential human, cattle, and wildlife health impacts from projected PM-10 emissions? Please provide the modeling to support the claim that Northern Cheyenne Air Class I air quality will not be impacted from all particulates.

Pages 4-97 through 4-101, Section 4.12 (Noise): As discussed above, NPRC contends that the Draft EIS must discuss noise mitigation measures for levels above, and below, 55-dBA. In addition, the impacts of low level noise on Tongue River Valley residents must be analyzed.

Pages 4-102 through 4-115, Section 4.14 (Tribal Impacts): As discussed at the ICC Public Hearings, and above, the Draft EIS fails to adequately discuss and mitigate impacts to Tribal members and resources. Additional study of the social, economic, and environmental resources of the impacted Tribes should be conducted.

Pages 4-116 through 4-123, and 6-3, Section 4.15 and Chapter 6 (Cultural Resources): The proposal in the Draft EIS to defer discussion and analysis of project impacts to cultural resources files in the face of the ICC's obligation under NEPA to analyze these impacts before making a decision. The detailed cultural resource analysis (through the "Programmatic Agreement") that is recognized as necessary in the Draft EIS must be conducted as part of the NEPA process, and included in a Supplemental Draft EIS.

Page 5-1, Section 5.2 (Social and Economic Impacts): The Draft EIS fails to address the potential adverse social and economic impacts that would result from Montana mine closures due to inability to compete with cheaper Wyoming coal. As discussed above, the failure of the Draft EIS to even address the potential impact renders it fatally flawed. A Supplemental Draft EIS must be prepared that looks at the impact to all of Montana if Montana's market share continues to fall because Wyoming has a closer route to the upper Midwest coal market.

Dana White
October 28, 1992
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Page 3-3, Section 3.6 (Water Quality): As discussed above, please explain how the ICC can propose a project that results in water quality violations that are clearly prohibited by Montana's nondegradation policy?

Appendix A (Mitigation Plan): NPRC believes that the proposed mitigation plan is not adequate to identify, such as mitigate, potential impacts to ranching operations. While the "objectives" of the proposed mitigation plan presents some noble goals, the lack of details, and prevalence of generalities, do not provide any assurance to impacted ranchers that the proposed rail line will not destroy their operations.

NPRC urges that the type of landowner discussion, and disclosure of ROW alignment, claimed to have occurred in the 89 mile line, be required prior to release of the Supplemental Draft EIS. Identification of potential grade crossings, underpasses, and construction easements is necessary in order for impacted landowners, and the public, to provide meaningful comments on potential impacts. Local impacts such as flooding, snow drifting, livestock and machinery requirements, fire fighting requirements, and water availability all have a tremendous impact on local operations and the environment.

NPRC objects to the selection of culverts at ephemeral and perennial stream crossings to only meet the projected 25 year flood. This will likely result in serious flood impacts within the projected life of the proposed project. The Northern Cheyenne Tribe has been in the area for hundreds, if not thousands, of years. Many ranch families have been working the land for at least four generations. The ICC should require that the entire railroad be designed for the maximum potential flood, not merely 25 or 100 year events.

Additional comments on the proposed mitigation plan have been discussed above, and at the ICC Public Hearings. Furthermore, the ICC should also provide for certain mitigation requirements that have been required for other rail line construction projects such as the Chicago & North Western line to the Southern Powder River Basin, that have not even been addressed by TRAC. These include, but are not limited to:

- study and require a vegetation plan to return all exposed surfaces to a native, perennial grassland;
- limit cut and fill slopes to 3:1 for cuts and fills and 2:1 for deeper cuts and fills (or less as local soil conditions require);

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Wally McRae, NPRC
Mr. Thomas Eberly, TRAC

enclosures
attachment A - Memo from Bob Frantz, Economist, Montana Department of Natural Resources and Conservation
attachment B - Letter from Paul Stewart, landowner who experienced a railroad being constructed and operated on his property
attachment C - Letter from the B M J Inc., Century 21 real estate firm

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- require local ROW fencing before any construction activity begins;
- require regular dust suppression with non-toxic dust suppressant because of proximity to the river;
- require ~~adequate~~ underpasses, overpasses, and grade crossings for cattle and machinery (not the 11 foot by 12 foot pipe proposed by TRAC), as well as sufficient grade crossings, bridges, and overpasses, to ensure access to water, fire fighting, pasture, and other ranch needs; and
- require adequate fencing and/or other control measures to meet landowners' needs, as well as taking into account impacts to wildlife.

17. CONCLUSION

For the reasons set forth above, and at the ICC Public Hearings, NPRC believes that the Draft EIS is inadequate. Based on the available information, the ICC cannot make a reasoned determination of potential impacts, and if it did make such a determination, the TRAC proposal must be denied.

NPRC is willing to work with the ICC to identify procedures, and areas of study, that could be incorporated in a Supplemental Draft EIS.

Sincerely,

Teresa Erickson
Teresa Erickson,
Director, NPRC
Grant D. Parker
Grant D. Parker,
Legal Counsel
Jeffrey A. Barber
Jeffrey A. Barber
NPRC Organizer

GDP/tlh

cc: Art Hayes, Jr., NPRC

Memorandum

To: Alan Davis
From: Bob Frantz *BF*
Date: August 17, 1992

Re: The Tongue River Railroad Company (Ashland to Decker extension) Draft Environmental Impact Statement

I have reviewed the Tongue River Railroad Company (Ashland to Decker extension) Draft Environmental Impact Statement (TRAC EIS). I have not had enough time to gather data and thoroughly analyze the document, but I believe the issues presented below should be brought before the Interstate Commerce Commission (ICC). Written comments concerning the EIS must be filed by September 11, 1992.

TRAC plans to extend the TRR southward from the permitted Montco mine site near Ashland, Montana to a railroad spur line that runs between Decker, Montana area mines and Sheridan, Wyoming. The Montco mine and a spur line joining BM's Northern Corridor at Miles City were permitted in 1984. Neither the Montco mine nor the Miles City spur line have yet been built. These railroads are depicted in Figure 1.

In my opinion the EIS is flawed, as it fails to address the intra-regional economic impacts of building the TRR extension. This is a significant omission, since the TRR extension could change the current configuration of the upper Midwestern coal market by possibly allowing Wyoming coal to expand into the usual market for Montana coal. The proposed rail extension could shorten the distance to markets reached along BM's Northern Corridor railroad by up to 170 miles for Decker, Montana area mines, and by about 140 miles for Gillette, Wyoming area mines. While TRAC correctly argues that the reduced travel distance should reduce the delivered cost of substantial quantities of Powder River Basin (PRB) coal, that reduction could position Wyoming coal at a net delivered cost advantage over some 25 percent of Montana coal currently sold in the northern Midwest market.

As it stands, the EIS contains no economic analysis of the impacts of a significant loss of the Montana coal market to Wyoming coal. I recommend that before the project is approved, the ICC should complete a comprehensive study of the intra-regional economic impacts of the TRR extension. The economic impact and project feasibility analyses should be applied to four scenarios for PRB coal demand: the no growth, low growth, medium growth and high growth scenarios. The socioeconomic impacts of the possible displacement of a significant fraction of Montana coal production should be included in the decision to allow construction of the project.

ATTACHMENT A

Discussion

The regional and national benefits of the proposed TRR are obvious. The railroad would shorten the travel distances for coal from major PRB coal mines, saving enormous amounts of money reducing freight costs, and making some PRB coal more competitive with coal from other regions.

Costs for Midwestern electric utilities are expected to increase as utilities comply with 1990 Clean Air Act (CAA) mandated sulfur emission standards. For many of these utilities, compliance costs could be reduced by switching to low sulfur "compliance coal" rather than installing scrubbers. Powder River Basin coal producers stand to gain a large portion of the anticipated growth in the market for low sulfur coal. This would certainly help the regional economy.

By providing rail access, the TRR also would open the Ashland, Montana, area to possible coal development. New coal development in Montana will depend almost completely on growth in demand for low sulfur coal. Increased demand for compliance coal is assumed in the EIS. Recent market conditions do not reflect this, and low or no growth scenarios should be investigated.

Division of PRB coal market shares between Montana and Wyoming is controlled by delivered cost, which in turn is controlled by geography, geology, and geology. Most Wyoming coal moves east or south along rails owned by competing companies, BM and Chicago and Northwestern. Most Montana coal moves east on BM's Northern Corridor (see Figures 7 and 8). The market for Montana's coal is largely restricted to areas where it has a significant travel cost advantage over Wyoming coal. The proposed TRR extension might upset the delicate equilibrium established in the PRB coal market.

The equilibrium depends on a number of components of the net delivered cost of coal, including the "coal rank" or heat value per unit weight, the coal extraction costs, and the freight cost. Coal mined in Wyoming appears to have a net cost advantage over Montana coal. In general, Wyoming coal has less overburden and thicker deposits than Montana, making it cheaper to mine. Lower extraction costs appear to compensate for the fact that the average rank of Wyoming coal is lower than Montana coal. Wyoming has a large travel cost advantage over Montana for most of the Midwest market, so great that Wyoming appears to be able to charge more than Montana at the mine south and still undercut the Montana coal delivered price. In parts of the northern Midwest market where Montana has a travel cost advantage, the delivered cost of Montana coal for long term contracts has been only slightly below the delivered cost of Wyoming coal. This has been the largest market for Montana coal.

Following is an itemization of some of the specific issues and scenarios that should be addressed. This list is by no means exhaustive, and gives more time these points could be further developed. While the Decker area mines stand to gain as much from the TRR as the Wyoming mines, these benefits are not explored as they are presented in the EIS.

Inter-regional issues:

- Construction of the Tongue River Railroad could make PRB coal more competitive in Midwestern markets, gaining cost advantages over coal from other regions by shortening haulage distances by up to 170 miles.
- All or much of the anticipated boom in demand for Powder River Basin (PRB) compliance coal (not yet experienced) could be lost due to efforts in Midwestern states to subsidize home-state coal or require utilities to install scrubbers rather than switch to compliance coal to meet new emission standards. The net result of their efforts could be to lower the demand for PRB coal, reducing if not removing the need for new development in the Ashland, Montana area, such as the Montco mine. This potential new coal development is the main justification for the TRR. It is conceivable that the TRR could end up serving only the three existing Montana coal mines south of Ashland and any of the 16 or so mines in Wyoming. This could adversely affect the competitive positions of the Big Sky mine (Peabody), the Absaroka mine (Westmoreland), and some production at the two Rosebud mines (Western Energy/Montana Power Company).

Intra-regional issues:

- Would the freight savings due to TRR necessarily materialize given BM's market power on the Northern Corridor? It is not necessarily guaranteed that any savings brought on by reduced distance given TRR would be passed through to utilities in the Midwest, especially if anticipated growth in demand for PRB coal increases the need for BM investment justifying BM rate increases. Can a new TRR compete with BM's existing routes?
- The EIS seems to anticipate a static coal market within the PRB following construction of TRR. However, it's nearly impossible to determine in this short time the intra-regional effects of TRR. There is a significant possibility that some Montana coal markets could be lost to Wyoming mines. This is particularly true for the TRR. Transportation costs of coal mines served by the TRR will be decreased, the Big Sky, Absaroka, and Rosebud mines currently served by

It is important to understand that the travel cost differential drives customer choice between Wyoming and Montana coal, since travel costs comprise the lion's share of the cost of coal delivered to generating plants. For instance, of the \$33 per ton paid in 1991 for Montana coal delivered to an Illinois generating plant, \$40 to \$45 was transportation cost. The cost for Wyoming coal of roughly equivalent rank delivered to Illinois was about \$48 in 1991, with roughly \$30 per ton transportation cost. While Wyoming coal freight rates tend to be lower than Montana rates, primarily the result of competition between the two rail carriers in Wyoming, much of the delivered price difference can be ascribed to the difference in travel distances.

In a few cases where the quality compensates for the travel distance disadvantage, small quantities of relatively high rank Montana coal are sold in the market Wyoming dominates. Generally, Wyoming coal keeps Montana coal shut out of markets where Wyoming has travel distance parity or advantage, since Wyoming coal is much cheaper to mine. If the TRR tips the balance toward Wyoming coal, a significant fraction of Montana coal production might be shut out of its market. Without analysis it is impossible to conclude which way the balance would move.

Much of the material in the EIS is predicated on optimistic projections of coal development in the PRB. The only socioeconomic impacts addressed in the EIS are the direct impacts of the rail line construction phase and the longer term displacement of rail workers. There are few reasons to believe, however, that the economic impacts of the project would be limited to costs stemming from labor force displacement or to travel distance benefits for the Decker area mines. Moreover, the EIS analysis fails to address (in any manner) the economic impacts that reduced travel distance might have on the dynamics of the PRB regional coal sellers' market. There is little reason to assume, as the authors do, that Wyoming coal marketers would be content to keep their current share of the Northern Corridor market. Rather, it is possible that Wyoming coal marketers would seek inroads into the Northern Corridor market, taking advantage of reduced travel cost.

To illustrate the possible repercussions of building the TRR extension on the regional coal market, imagine moving a half dozen of the Gillette area mines 100 miles northwest to the Decker area. Using the current dynamics of competition within Montana as a guide, this would greatly increase the competition on the Montana mines that produce lower rank coal, the Absaroka, Big Sky and Rosebud mines. Failure to attract contracts could result in the closure some of these mines. Avoidable or not, the impacts in Montana on jobs and state tax revenues might be extreme, and should be examined.

short spurs on BM's Northern Corridor might lose their travel cost advantages over Wyoming coal. Much of Montana's coal production appears to be marginal given the current railroad configuration, as evidenced by Peabody's difficulty in acquiring new long term contracts. As such, the ability of these mines to compete for contracts could be undermined by loss of their transportation advantage is the only significant market they can effectively compete for, the northern Midwest.

Currently, Wyoming mines have a distinct travel cost advantage over Montana for most markets. Wyoming mines benefit from proximity with much of the large Midwestern market, and from competition between BM and Chicago and Northwestern's affiliate Western Resource Properties, Incorporated (WRPI). This competition effectively reduces coal freight rates and stimulates investment to increase efficiency on these routes. Most PRB railroad investment has taken place on lines serving Wyoming, so now the southern BM and WRPI corridors have faster train delivery and return cycle rates than the BM Northern Corridor. As a result, Wyoming coal has better access to rail routes into the Great Lakes market than Montana, and could handle rail traffic growth more efficiently where such of the switching to compliance coal is expected to occur.

In contrast, much less recent investment has occurred in BM's Northern Corridor. Electric Power Research Institute (EPRI) studies indicate that growth in coal traffic along the BM's Northern Corridor would require additional BM investment. Under monopolistic conditions, railroad investment in the past has resulted in higher freight rates as rail companies seek returns on investments. The lack of rail company competition and lack of recent investment could result in a general freight cost disadvantage for all BM Northern Corridor coal shippers attempting to compete with coal moving on existing Wyoming routes. This could be especially true in the Great Lakes market.

A problem on the BM Northern Corridor that might constrain coal traffic growth is the timing of investment for expanded throughput capacity at the Superior Midwest Energy Terminal on the east end of BM's Northern Corridor. This terminal provides access to the market with the greatest potential for growth for Montana coal. Currently, this terminal is operating near capacity, and investment in more capacity would be closely linked to the existence of new contracts. Wyoming coal has a separate route to Great Lakes markets, and might absorb an increased demand for PRB coal. The net result might be a long delay in expansion of Superior Midwest Energy Terminal capacity, a dilemma for Montana coal supplies seeking market growth as Wyoming

captures most incremental demand growth. Montana coal might lose the foot race with Wyoming coal, and never get the contracts needed to stimulate necessary investment.

- If the TRR is a necessary condition for the financial feasibility of the Montco mine, is the Montco mine a necessary condition for feasibility of the TRR? The Montco mine was initially permitted in November, 1984, and appears to have languished for nearly eight years without any (prospective) contracts in the current market. If the 3 or 4 proposed mines along TRR fail to materialize, TRR haulage from the south might fail to meet fixed costs. If the Montco mine is a necessary condition for the financial feasibility of the TRR, the railroad might then be insolvent.
- If optimistic projections of PRS coal demand prove incorrect, the TRR might fail, and would probably end up being most valuable to BN. Through predatory pricing of its rail service, BN would be in an excellent position to guarantee that TRR appeared unattractive to potential buyers, and would probably be able to exceed all other bids for a failed TRR.
- The variable costs of production at Wyoming mines are almost certainly lower than Montana mines, and the cost of capital needed to develop new Montana mines (including, in some cases, building dedicated spur lines to main railroads) likely would greatly exceed the costs of expanding production at the huge Wyoming mines (most of which are served by railroad companies competing for their business). In combination, these factors indicate that Wyoming could and probably would continue to outperform Montana in meeting nearly all incremental PRS coal demand growth in Wyoming's traditional market. If TRR eliminates Montana's travel cost advantage to the Northern Corridor Midwest, Wyoming could also capture this market.

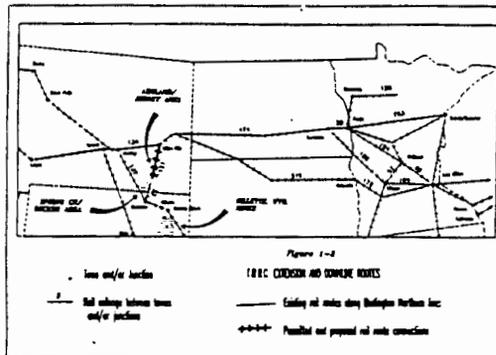


Figure 1. TRR Extension and Downline Routes

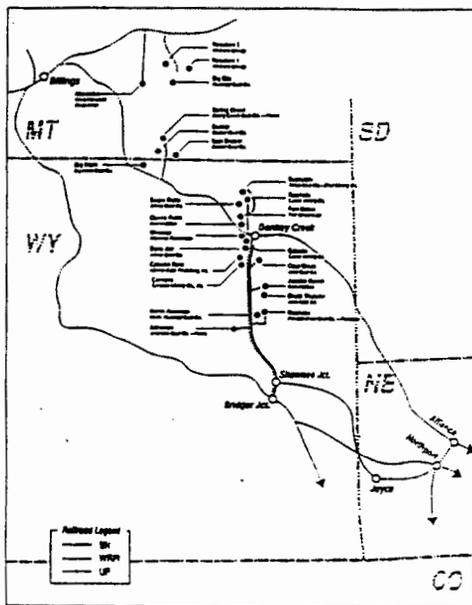


Figure 2. Powder River Basin Mines and Railroads

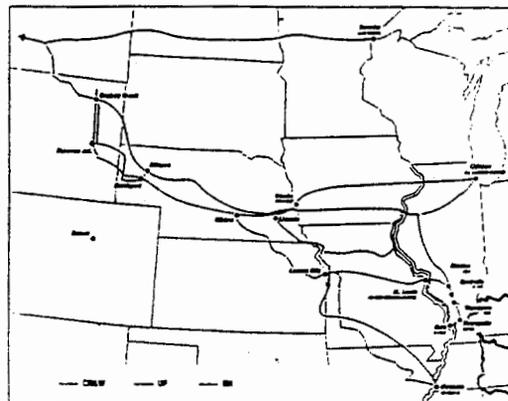


Figure 3. Primary Western Coal Routes To Eastern and Midwestern Markets

AUG 26 1992

ATTACHMENT B

Mr. Travis Ericson
N.P.R.C.
419 Stapleton Building
Billings Mont. 59101

Dear Mr. Ericson

This letter will document some of my experiences concerning trying with a railroad over the last 10 years.

The main question to the little rail line was started in the late 70's in the Powder River Basin.

It is approximately 100 miles long with branch lines extending out about 10 miles.

Initially landowners were given the right of way area and were allowed to place fence to survey for the line.

The Converse County landowners first organized to protest the proposed right of way group for the railroad.

The main issue then was the right of way across the Campbell landowners.

We remember the meeting with Burlington Northern right of way agents. It became apparent that we were competing against professionals, that we didn't know what our rights were, that we were

operating times for 15 miles.

You will never find the person in charge to rectify any problem such as temporary fencing or coverings.

The next problem encountered was the dust the railroad came through the west side of Thunder Basin.

For 2 miles of my leased pasture & a branch line ran for 2 miles down the North Prong of Little Thunder creek which was a pasture I used for summer grazing.

The cattle became ill because the dust was so thick that they

became covered and they would not eat it. I called in the local health people to place monitors.

and the first week the results were many times the allowable limit. No

nothing was done. The monitors were only used when the dust was

intermittent and the other monitors were allowed to blow. I had to move my cows out and doctor them the rest of the summer.

The track laying crew was equally hard to get along with. Most of the summer and fall the only place you could cross the tracks was at a state

under the threat of condemnation by the eminent domain laws and that we needed professional representation.

Due to the fact that the line would only cross my leased land and forest we permit I did not get to attend the negotiating meetings for purchasing rights of way but I do know that Henry Burgess of Sheridan was hired as counsel and that a large per acre price was agreed to.

Since then I have heard many statements comment that if they had only known what the rail and I would do then they would not have sold it so cheaply.

Meraho Construction Company had the contract to build the track and lay the track. They started from Queen Junction and headed south and from there it has been a running battle to keep in the area and try to keep the

first problem I encountered was the dirt moving crew got away ahead of the fencing construction at any time it was said that a cow could travel for 30 miles from his home pasture and never cross a decent fence up and down the right of way. I have personal experience that my summer pasture was

brighter or county road which in most cases were 16 miles apart. The incomprehension of trying to ranch around this huge obstacle is hard to believe until you have to do it.

They finally got it finished after about 2 years, but the insistence of the landowners group, they built crossings with fence swings and in track out gates so you could move livestock across the tracks if you had enough help. I advise them not to do that

with the problem of too many gates never been before blowing up the right of way, blocked the way for house at a time and a complete

disregard for degrading the area. I had anything to say about it I would not allow anyone to build on any of my leased or leased land if I had to live here until they died. They are not good neighbors and their right of way agents cannot be trusted in my opinion.

Sincerely,
Paul Robertson
6559 Clacker Hwy. G. Little Wyo.
82716

Century 21

B M J Inc.
40 South Main
Shannon, Wyoming 82501
(307) 877-9028 / Fax: (307) 874-4017

Mr. William Musgrave
Box 37
Decker, MT 59025

Dear Bill:

As you know, interest in scenic ranch properties has increased dramatically over the period of the past six months. This should be apparent by the increased number of showings of your property by members of our firm. The feedback we've received from these prospective buyers has been very positive for the most part. Almost without exception, each one to whom your ranch was shown, was impressed with the privacy and pristine beauty of this location. The only negative concern expressed was that of the Tongue River Railroad being built in this beautiful setting. The rumors alone were enough to discourage our prospects from submitting offers on your property. As the prospect of the railroad becomes more imminent, the requests for showings has diminished.

In light of the distinct possibility of the railroad construction, it appears your property will not support the price of our initial Market Analysis. The property would retain a good portion of its value based upon a strictly "agricultural use appraisal", which is approximately \$300,000 less than our current appraisal. This certainly is not good news for you or for us, but I feel our input is appropriate at this time in order to adjust future planning to reduce the negative impact as much as possible.

Sincerely,
[Signature]

Ronald J. Garland
Associate Broker

[Signature]
Chuck Simon
Associate Broker

[Signature]
E. Amory Hubbard
Associate Broker

[Signature]
Koyce St. Clair
Associate Broker

F/A Dept/sds

AUG 10 1992

ATTACHMENT C

July 28, 1992

Tawney & Dayton
Attorneys At Law

Henry R. Crane
Peter S. Devan
Curtis D. Parker
Philip D. Tawney
Peter Michael Melzer

700 West 161st
Missoula, Montana 59806-3658
Telephone: (406) 541-5000
In Montana: (406) 821-4126
FAX: (406) 541-0910

VIA FEDERAL EXPRESS

October 20, 1992

Dana White
Section of Energy and Environment, Room 2214
Interstate Commerce Commission
Washington, D.C. 20423

RE: Finance Docket No. 30186 (Sub-No. 2), Northern Plains
Resource Council Comments on Tongue River Railroad
Draft EIS Legal Deficiencies

Dear Ms. White:

Presented below are the comments submitted on behalf of the Northern Plains Resource Council ("NPRC") on legal deficiencies of the Tongue River Railroad Company ("TRRC") Draft Environmental Impact Statement ("Draft EIS") of the proposed rail line from Ashland to Decker. Finance Docket No. 30186 (Sub-No. 2). The Draft EIS is seriously inadequate. To comply with the environmental review requirements of the National Environmental Policy Act ("NEPA"), the ICC must prepare a Supplemental Draft EIS. 42 U.S.C. §4321 et seq.

This letter supplements other comments submitted by NPRC on the adequacy of the Draft EIS, as well as comments presented by the public at the ICC Hearings in Foreyth, Miles City, Lame Deer, and Sheridan.

Legal problems with the Draft EIS include, but are not limited to, the following:

A. Alternatives

As discussed in NPRC's other comments, the Draft EIS fails to adequately address alternatives as required by NEPA. 42 U.S.C. §4322(2)(C)(iii) and §4322(2)(E). ICC's regulations also require a comprehensive description of any reasonable alternatives. 49 CFR §1105.7(e)(1). The no action alternative must address the possibility and probability that TRRC may or may not construct the approved 89 mile rail line. The EIS must consider the potential impacts on the Tongue River Valley and impacted areas if only the 89 mile line is constructed, as well as if no line is constructed.

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October 20, 1992
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The Draft EIS is also deficient in its study of alternatives. Alternative coal conveyance systems, such as a CO2 coal slurry pipeline, must be addressed. In addition, alternative routes to mitigate impacts to wells, hay fields, cultural, spiritual and historical sites, and to burial sites must be addressed in the EIS. The failure to consider these reasonable alternative renders the Draft EIS deficient. *Brooks v. Coleman*, 518 F.2d 17, 18 (9th Cir. 1975); 40 CFR §1502.14(a).

B. Cumulative Impacts

The ICC is facing at least two significantly different coal production scenarios that may result from TRRC's proposal. TRRC continues to make bold claims that its principals will be promptly developing the Montco mine, and that the line will stimulate coal production from a number of mines along the Tongue River. On the other hand, compelling testimony has been offered to support NPRC's position that the proposed line may actually hurt Montana coal production, and result in the closure of Montana mines. These two potential scenarios must be thoroughly studied and presented to the public for comment. Based on these possible shifts in coal production, the direct and indirect impacts on Montana and Wyoming wildlife, housing, schools, transportation, fire and ambulance capability, population demographics, agricultural production, tax base, and other environmental, social, and economic impacts must be addressed.

Because of the failure to discuss adverse impacts to Montana "compliance" and "non-compliance" coal mines, the Draft EIS does not adequately analyze the cumulative impacts caused by the proposed line. Furthermore, the potential impact to the Montana coal market, and Montana's economy, must be addressed in a complete cost-benefit analysis. The ICC is required to indicate and analyze such factors that are likely to be relevant and important to its decision. 40 CFR §1502.23.

The cumulative impacts of railroad construction in conjunction with reconstruction of the Tongue River dam must be addressed. These potential impacts, coupled with proposed mine development in the region, constitute exactly the type of impacts necessitating cumulative impact analysis. *Klemp v. Sierra Club*, 427 U.S. 390, 410 (1976); 40 CFR §1508.27(b)(7); 40 CFR §1508.7.

C. Tiering

The Draft EIS relies heavily on earlier documents. While the CEQ regulations allow the tiering of documents, the subsequent EIS is required to state where the earlier documents are available. 40 CFR §1502.20. Despite regulations requiring

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all material incorporated by reference to be readily available, many documents referred to in the Draft EIS were not easily accessible to people in the Tongue River Valley, or were simply not available at all. 40 CFR §1502.21. Since the Draft EIS did not identify the location where documents upon which it relied are located, such information was simply not available to the public. Thus, all documents on which the ICC hoped to tier must be ignored, rendering the Draft EIS deficient.

In addition, a tiered EIS may not improperly rely on stale, or otherwise inadequate, documentation. *Komliss v. Varco*, 392 F.Supp. 578, 588 (E.D.Mich. 1975). NPRC urges the ICC to prepare a Supplemental Draft EIS which complies with the CEQ regulations, and properly relies on current documents that are identified, and available, to the public.

D. Segmentation

Since TRRC's application for the 42 mile line is considered a supplement to the already approved 89 mile line, the impacts from the entire line should be considered in the Draft EIS. Moreover, the impacts of the entire line are cumulative and interconnected. Courts do not allow segmentation of projects to avoid NEPA review. *Indian Lookout Alliance v. Volpe*, 484 F.2d 11, 16-20 (8th Cir. 1973).

The cumulative impacts from construction and operation of the entire line must be considered. Reliance on the 1985 EIS in light of new evidence and changed circumstances is a violation of NEPA. Neither the 1985 EIS nor the latest Draft EIS considered cumulative impacts to the social and cultural resources, fish and wildlife populations, or the ranching community resulting from construction and operation of the 133 mile rail line through the Tongue River Valley. Thus, the ICC must provide an analysis of all impacts associated with the entire 133 mile line in a Supplemental Draft EIS.

E. Cultural Impacts

NPRC and others have provided extensive testimony regarding cultural impacts to the ranching community, and cultural and spiritual impacts to the Northern Cheyenne Tribe and other Native Americans. Most of these impacts were not addressed in the Draft EIS. ICC and TRRC attempt to rely on future cultural studies, and the "Programmatic Agreement," to satisfy the obligation to address impacts in an EIS. This failure to adequately address cultural impacts in the Draft EIS renders it legally deficient.

In addition, the ICC must recognize its fiduciary responsibility to the Northern Cheyenne Tribe in conducting the EIS, and in making any decision regarding TRNC's application. Iskola Nation v. United States, 316 U.S. 286, 296 (1942); United States v. Mitchell, 463 U.S. 206, 225 (1983) [Mitchell II].

F. Air Quality Impacts

The Draft EIS makes summary conclusions that coal dust emissions, and fugitive dust, will not cause adverse impacts to local ranchers, nor degrade the Class I air quality of the Northern Cheyenne Indian Reservation. However, the document is deficient in that it provided no assurance of the scientific integrity of the analysis. No modeling of the data was presented. For instance, dust from railroad construction could easily blow onto the Northern Cheyenne Reservation, causing air quality violations. Specific methodologies used to justify the air quality conclusions should be included in the EIS. 40 CFR §1502.24.

G. Water Quality

The Draft EIS recognizes that the proposal will degrade water quality. This recognition is directly contradicted by Montana's nondegradation policy which only allows new sources that will not degrade the high quality of Montana's waters. The statute provides as follows:

Nondegradation policy. The board shall require:

(1) that any state waters whose existing water quality is higher than the established water quality standards be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated use of these waters; and

(2) any industrial, public, or private project or development which would constitute a new source of pollution or an increased source of pollution to high-quality waters, referred to in subsection (1), to provide the degree of waste treatment necessary to maintain that existing high water quality. (Emphasis supplied.) MCA §75-5-103.

The failure of the Draft EIS to acknowledge the nondegradation policy, and to require analysis of mitigation measures to prevent

pollution into the Tongue River, violates both Montana law and the National Environmental Policy Act.

In addition, the Northern Cheyenne Tribe, under Section 518 of the Clean Water Act, has authority to establish water quality standards for Reservation waters. 33 U.S.C. §1377. In fact, the Tribe has received state-like recognition from EPA, and has delegated federal and sovereign authority to develop Tribal water quality standards. The Draft EIS fails to address the Tribes' water quality program and Tribal water quality standards and goals for the Tongue River, just as it ignores Montana's nondegradation policy. A thorough study of State and Tribal water quality requirements is needed.

The failure to discuss inconsistencies with State, and possibly Tribal, water quality laws constitutes a violation of ICC's environmental regulatory requirements. 49 CFR §1105.7(a)(9).

H. Fish, Wildlife, and Plants

The Draft EIS fails to study, or adequately study, a significant portion of the right of way ("ROW") for wildlife and vegetation. This is especially egregious because no comprehensive field search was conducted for threatened and endangered species. Based on testimony at the ICC hearings, the Draft EIS failed to identify three bald eagle nests in one three mile stretch of the river. This analysis is inadequate to determine whether the proposed action could adversely affect threatened and endangered species, much less to describe the impacts as required by ICC regulations. 49 CFR §1105.7(a)(8).

The Draft EIS fails to take the hard look at wildlife impacts and migration routes required by NEPA. Marble Mountain Audubon Society v. BLM, 194 F.2d 179 (9th Cir. 1959). The wildlife impacts must be considered before the ICC renders a decision on TRNC's application. Rob Marshall Alliance v. Watt, 683 F.Supp. 1514, 1519 (D.Mont. 1987). The failure to conduct field surveys for endangered species prior to agency action is a violation of the Endangered Species Act as well as NEPA. Rob Marshall Alliance v. Watt, at 1522; 16 U.S.C. §1536(a)(2).

I. Environmental, Social, and Economic Impacts

NEPA mandates that an EIS present a full and fair analysis of environmental, social, and economic impacts. Lathan v. Volpe, 435 F.Supp. 262, 266 (W.D.Wash. 1972). The necessary additional analysis must include discussion of impacts on the ranching community, and a complete and detailed description of

impacts to farm and grazing land. The EIS must be a real planning document, not merely a justification for a project that preceded from the assumption that the railroad would be approved and built. See Rob Marshall Alliance, 517 F.2d 746 (7th Cir. 1975). As discussed at the public hearings and in NEPA's factual comments, the significant environmental, social, and economic impacts were not adequately addressed.

J. Additional Studies Needed

The Draft EIS did not adequately address aesthetics and recreational impacts to the Tongue River Valley. Recreational use and aesthetic enjoyment are among the types of interests that NEPA was designed to protect. ICC's failure to adequately address these impacts constitutes a fatal flaw in the document. Sierra Club v. Robertson, 764 F.Supp. 346, 352 (W.D.Ark. 1991).

The Draft EIS is also deficient because of the lack of field investigation of impacts to agricultural operations, wildlife, fish, vegetation, as well as adverse impacts to cultural, spiritual, and religious sites. It does not appear, based on the Draft EIS, that an adequate historic report as required by 49 CFR §1105.8 has been prepared which addresses the historic sites identified in the ICC public hearings. In fact the Draft EIS at 4-120 admits that there are a number of previously identified properties that were not given historical evaluations.

The ICC is obligated to provide a history of the success or failure of railroad projects, as well as TRNC's principals' coal speculations, in the Tongue River Valley. Natural Resources Defense Council v. Grant, 755 F.Supp. 288, 288 (1972). In addition, the Draft EIS must adequately describe the project's impacts on fire, police, ambulance, schools, public roads, adjoining properties, and societal impacts. 49 CFR §1105(a)(11).

K. Noise

ICC regulations state that as increase in noise levels of three decibels Ldn requires quantification of noise level increases for sensitive receptors. The level of noise increase in residences, schools, traditional community and Tribal gathering areas, as well as cultural and spiritual sites, must be addressed. 49 CFR §1105.7(f). Background noise levels must be obtained, and documentation of the projected increase at each RSHB site must be provided in a Supplemental Draft EIS.

L. Referral to Future Studies

One of the most glaring deficiencies in the Draft EIS is the propensity to defer needed studies into the future. The attempt to defer mitigation of agricultural operations, wildlife studies, and cultural resources to the future flies in the face of NEPA's requirement that an agency know the environmental impacts before making a decision. 42 U.S.C. §4322(2)(C).

M. Mitigation

The ICC must present a reasonable and complete discussion of mitigation measures. ICC regulations require an EIS to include any proposals to mitigate adverse environmental impacts. 49 CFR §1105.7(e)(10). Since the Draft EIS fails to address significant wildlife, cultural, and agricultural impacts, it is impossible for the document to present, and for the ICC to consider, the necessary mitigation requirements.

Because the Draft EIS omitted adequate discussion of many of these impacts, the document failed to adequately address measures to avoid adverse impacts to ranchers, wildlife, water quality, and the Northern Cheyenne Tribe. Robertson v. Natlow Valley Citizens Council, 490 U.S. 332, 351-32 (1989). By pushing detailed studies of cultural, agricultural, and wildlife resources into the future, the ICC is not able to present a meaningful discussion of a mitigation plan.

N. A Supplemental Draft EIS is Required

Under CEQ and ICC regulations, a supplemental EIS is clearly required. 49 CFR §1502.4(a)(3); 49 CFR §1105.10(a)(5). The ICC must withhold issuing its decision until environmental and historical preservation issues have been adequately addressed and resolved. 49 CFR §1105.10(f). Based on the significant amount of information that has been ignored, avoided, or not even addressed in the Draft EIS, the ICC cannot render any decision until a Supplemental Draft EIS has been prepared and finalized.

O. Conclusion

The Montana Constitution guarantees all persons the inalienable right to a clean and healthy environment. Mont. Const. Article II, Section 3. This self-executing right serves as a guide, and a limitation, on governmental actions. See Kemmis, The Montana Constitution, section I on "Environmental Rights," 19 Mont. L. Rev. 221, 231 (1978). The ICC must use this constitutional imperative to determine whether there has been adequate environmental review, as well as consider this right

Dana White
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when the Commission deliberates on whether to deny TRRC's application.

In conclusion, the ICC must not make any decision on TRRC's application until it has prepared, and reviewed, an environmental impact statement that complies with NEPA. A Supplemental EIS should be prepared to address the concerns raised by IFRC and others, and to ensure that the ICC takes a hard look at the environmental, social, and economic consequences of TRRC's proposal. 40 CFR §1503.4(a)(3). In addition, the ICC should hold another hearing on TRRC's proposal after an adequate, and complete, Final EIS has been prepared. 40 CFR §1502.2.

Respectfully Submitted,

TAWNEY & DAYTON

Grant D. Parker

GDP/tjh

cc: Mr. Thomas Ebrary, TRAC

SANTANGELO & TROPE
ATTORNEYS AT LAW
11 DIVISION STREET
P.O. BOX 88
ROCKFORD, ILL. 61089

JOCE F. TROPE
ALAN A. SANTANGELO

(800) 233-9191
FAX: (800) 233-9191

October 19, 1992

Dana White
Section of Energy and Environment
Room 3214
Interstate Commerce Commission
Washington, D. C. 20423

Re: Tonque River Railroad Company Rail Line
Draft Environmental Impact Statement
Finance Docket No. 30186 (Sub-No. 2)

Dear Ms. White:

These comments are filed on behalf of the Association on American Indian Affairs, Inc. (AAIA). AAIA is an 80-year old national citizens' organization located in New York City dedicated to the protection and enhancement of Indian rights and culture. Its policies are set by a Board of Directors, the majority of whom are Native American. A top priority for AAIA is the protection of the religious and cultural rights of Native Americans. It is from that frame of reference that these comments to the Draft Environmental Impact Statement (DEIS) are offered.

1. General responses to the proposed project

Before analyzing the specific legal shortcomings in the DEIS, it is worth emphasizing the impact of the proposed development upon the Northern Cheyenne (and to a lesser extent the Crow) Tribes. The DEIS explicitly recognizes that "the impacts from the changing surrounding landscape associated with rail operations, coal mining and increased development would represent an irreversible spiritual loss" to the Northern Cheyenne (Page 5-6). This is the case because traditional Northern Cheyenne have a spiritual relationship with the Tonque River, the Tonque River Valley and some of the animals and plants that live in the valley. This is particularly true of the residents of Birney Village who are among the most traditional of the Northern Cheyenne and whose village is located directly adjacent to the proposed rail line. There are sacred

ceremonial sites in the area that would be traversed by the rail line and sacred medicinal plants are collected along the river. Traditional Northern Cheyenne believe that the Valley is the home to spirits and contains spirit trails. They believe that it is their duty to take care of the Valley in order to protect the journey of future generations "to join those now living." (Pages 2-16 through 2-40)

Indeed, the DEIS acknowledges that "from the Northern Cheyenne perspective, coal pollution of the waters will destroy the spiritual tie between the people and the spirit of the river and that traditional practitioners believe that there is no mitigation possible for the loss of this spiritual tie." (Page 2-38). It recognizes that the "noise and air pollution" caused by the project could "interfere with the Northern Cheyenne's current use of the hills around Birney Village for fasts and vision quests [because] [i]nterrupted solitude is necessary to engage in these ongoing religious activities" (Page 4-113) and that "[i]mpacts to Native American religious sites may also occur by limiting access." (Page 4-118). (One vision quest site has been specifically identified by the DEIS as being located within the 1,000 foot right-of-way, as well as a number of rock art sites.) (Pages 4-121 and 2-32) In sum, the DEIS unambiguously concludes that the traditional Northern Cheyenne believe that this project will "inhibit the ability [of traditional Northern Cheyenne] to continue traditional religious activities" and that the expansion of coal mining associated with the railroad would be "a direct and eminent threat to their ability to maintain their spiritual ties to their homeland." (Page 2-40)

Moreover, the DEIS recognizes that the project will have the effect of greatly increasing the burden upon people residing on the Northern Cheyenne Reservation and their tribal government in terms of reservation infrastructure (roads, water and sewer), health and social services and law enforcement. The project is likely to generate little revenue for the Tribe (unlike local Montana governments), minimal employment for tribal members and increase traffic levels on already inadequate reservation roads. (Page 4-106 through 4-110) Thus, the project will have a negative secular impact in addition to the profoundly negative spiritual impact.

For these reasons, the desirability of this proposal must be seriously questioned from a policy perspective. The Federal government has a Federal trust responsibility to Indian people and Tribes which imposes a fiduciary relationship upon all agencies of the Federal government. See, e.g., *Wyand Lake Paiute Tribe v. NRC*, 898 F.2d 1410 (9th Cir. 1990). Moreover, it is the policy of the United States "to protect and preserve for American Indians their inherent right to freedom to believe, express and exercise [their] traditional religions...including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonial and traditional rites." 43 U.S.C. 1996. This project has a negative and potentially devastating

impact upon Native Americans. It simply ought not go forward absent compelling reasons justifying its need. Nothing in the DEIS currently supports such a finding and thus its conclusions are flawed from both a policy and a legal perspective.

2. Specific Legal Issues Pertaining to the DEIS

Our review of the DEIS reveals the following legal issues specifically pertaining to the preparation of that document:

1. National Environmental Policy Act (NEPA) regulations require that an EIS consider all feasible alternatives and state that this evaluation is "the heart of the environmental impact statement". 40 C.F.R. 1502.14. An EIS must from an environmental perspective "rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated." In addition, "an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision." 40 C.F.R. 1502.23. In short, as the case law has emphasized, the EIS must take a "hard look" at the alternatives. Moreover, an EIS must "[i]nclude the alternative of no action".

A Council on Environmental Quality memorandum, published at 46 Fed. Reg. 18026 (1981), explains that these regulations require evaluation of alternatives that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant." It further opines that "it is difficult to think of a situation where it would not be appropriate to address a 'no action' alternative".

These requirements are virtually ignored in the DEIS. There is in essence no evaluation of the "no action" alternative. The document simply assumes the need for a rail line in this area, stating that the proposal "reflects the transportation requirements for the current coal market", and begins its analysis at that point. (Page 1-1) There is no analysis of the need for the project. In addition, there is no discussion in the DEIS of the environmental, social and cultural effect of the "no action" alternative and how that compares with the construction alternatives. (Page 1-16) Moreover, the DEIS assumes that the already approved Miles City-Asland part of the line will be constructed with or without approval of the Extension. Yet the DEIS now estimates that the total tonnage of coal hauled on the rail line, including the Extension, will not exceed the total originally estimated for the Miles City-Asland segment alone in the medium scenario of the 1985 EIS. (Page 1-9) If this is true, it may be that the Miles City-Asland segment is not economical for the applicant without the Extension and that it would not be built absent approval of the Extension. This possibility must also be

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evaluated and analyzed in the DEIS.

In terms of other construction alternatives aside from the two options that are analyzed, the DEIS simply states that "[g]iven the restricted geography of the upper Tongue River region in Montana, we concur with TRCC's engineering data which concludes that the Four Mile Creek Alternative is the only viable alternative for the proposed Extension." (Pages 3-10 through 3-11). This conclusory statement is insufficient to justify limiting discussion of alternatives in this document to the proposed Extension and the Four Mile Creek alternative. At the very least, the EIS must identify and evaluate other alternatives which represent the range of possible alternatives and provide specific reasons why each of the other alternatives was not feasible.

2. 40 C.F.R. 1502.22(e) requires that where "incomplete information relevant to reasonably foreseeable significant impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement."

The DEIS indicates that a Biological Assessment will be prepared "during final engineering if the proposed Extension is approved." (Page 4-87). Moreover, field studies pertaining to wildlife and "unique plant species" are not planned until the pre-construction phase. (Pages 4-83, 4-85) In addition, the DEIS acknowledges that "[t]he exact number of cultural resources and sites that would be impacted by the proposed Extension cannot be known prior to an intensive pedestrian survey of the impact area because the vast majority of cultural resources have never been recorded." (Page 4-112). It indicates that a cultural resources survey will occur at some time in the future under the rubric of the NEPA Programmatic Agreement to be negotiated and that this survey would include development of a list of "traditionally important plants" and "gathering sites and access points for these plants." (Page 4-25) Indeed, it appears that the limited cultural resources analysis that was performed, described in section 4.14, did not even include Native Americans (although it appears some analysis may have occurred as part of other studies -- if so, the material is not well integrated); the DEIS is a little unclear in this regard. The effect of this project upon sacred and culturally significant sites, as well as sacred species such as eagles, is substantial and these studies are critical if there is to be a full analysis of the impact of this project upon Native Americans. (Obviously, these studies are also required if a complete analysis of environmental and other social impacts is to occur.) Yet this information has not been obtained even though it can be obtained without exorbitant cost.

It is not only in these areas which directly affect Native American religious and cultural rights that required studies have

not been done. The Corps of Engineers has identified the Tongue River Dam as "high hazard". Yet the DEIS simply assumes that the impact of blasting from the dam will not be significant, noting that "[i]f future studies determine that blasting would pose a risk to the dam, an alternative to blasting would be proposed." (Page 4-53). In addition, the DEIS agrees with the TRCC proposal to conduct a more detailed analysis of the impact of the project upon wetlands "during final engineering". (Page 4-67). Finally, much of the information pertaining to the Tongue River and its fish population dates back fifteen years or more and there is no indication of any intent to update this information. (Page 2-10 to 2-11). In short, a considerable amount of valuable information needed to make a decision as to alternatives is lacking; it is clear that the DEIS impermissibly assumes that this project should go forward -- that the only question is "how", not "if".

3. The Draft EIS does not adequately analyze the cumulative impacts (see 40 C.F.R. 1508.7) of proposed rail line construction and future mining. Cumulative impacts include "the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions..."

The previously approved segment of the rail line has not been built and, as discussed above, may never be built if the Extension is not approved. It is simply inappropriate to consider the two rail line are separate or segmented rail lines -- they are part of the same construction project. Moreover, a major reason for the rail line is to facilitate the development of future mines in the Tongue River Valley. For these reasons, the full impact of this proposal can only be ascertained if a comprehensive evaluation of anticipated coal mining and the impact of the entire rail line is made. This is especially true not only because of the impact upon Native Americans, but also the impact upon the environment and non-Native communities. For instance, the DEIS identifies a serious lack of fire and medical services as well as inadequate roads and infrastructure. (Pages 4-7 and 4-29 through 4-44) The demand upon these services and facilities -- stretched to their limits simply by the proposed Extension -- is likely to be significantly greater than suggested by the DEIS because of the cumulative impact of the entire rail line and proposed coal mines. Likewise, the impact upon vegetation, wildlife and water quality is likely to be far greater than the cumulative impact of the construction of the entire rail line and proposed mines which it would service is considered. In terms of groundwater and water resources, reference is made to an article entitled "Review of a Coal Strip-Mining EA: The Accuracy of an Analysis" by Richard L. Ellison in Environmental Impact Assessment Review 1988, 8 221-232. Many of the impacts upon water resources and groundwater described in that article have not even been acknowledged in the DEIS.

4. 40 C.F.R. 1502.16(c) requires that the DEIS identify possible conflicts between the proposed action and the objectives

of land use plans and policies of local governments and, in the case where a project affects a reservation, of Indian tribes. The "effects" of an action include those which are caused by the action even where they are "removed in distance" if they "are reasonably foreseeable." 40 C.F.R. 1508.4(b). Clearly, the impact upon the Northern Cheyenne Reservation, particularly the impact upon the community of Birney which is adjacent to the proposed rail line and within aural distance, falls within this definition. As such, an analysis of the conflict between tribal goals and this project is required; this has not been done in the DEIS. Indeed, the issue of tribal land claims to part of the right of way area has been dismissed as essentially outside the scope of the DEIS. (Page 4-113) Yet it would seem that consideration of this issue falls squarely within the intent of this regulation. In addition, it is worth noting that local communities such as Forsyth are opposed to the project and there is little analysis of the conflicts between their policies and the objectives of this project.

5. One goal of NEPA is to "preserve important historic, cultural and natural aspects of our national heritage." Section 101(b)(4) of P.L. 91-190. Accordingly, 40 C.F.R. 1502.16(g) requires that the DEIS identify historic and cultural resources, including possible mitigation measures. As previously described, the identification of such resources has occurred to only a limited extent in the DEIS. Full identification should occur before a decision is made, not simply as part of the mitigation process after the decision is made. Moreover, in the section on mitigation of the impact of the project upon cultural resources, there is little analysis of what is to be done -- only a reference to a "to be negotiated" Memorandum of Agreement. (Page A-23). In regard to religious and sacred properties, the DEIS indicates simply that "consultation will be initiated with the Northern Cheyenne." (page 4-120) While this consultation is of course highly desirable and critical, it does not alleviate the need for some further analysis in the DEIS, particularly when the paucity of detail in this part of the mitigation plan is compared to the other subsections of Appendix A which consider the mitigation measures to be required in some detail.

6. The identification of the environmentally preferred alternative, as required by 40 C.F.R. 1505.2(b), is seriously flawed. No consideration is given to the "No Action" alternative as being the environmentally preferred alternative -- yet it is almost certain that the "No Action" alternative would in fact be the environmentally preferred alternative.

7. The DEIS does not adequately consider the psychological effects of the changes proposed in the physical environment. It treats as a side issue the strong religious beliefs of those Native Americans who utilize sites impacted by this project for religious purposes.

8. If any grave sites are located within the construction area on Federal land, the Native American Graves Protection and Repatriation Act provides that the human remains or cultural items may be excavated only after notice to and consultation with any tribe that has a cultural affiliation with the human remains or cultural items, or, if cultural affiliation is unknown, notice must be given and consultation must occur with any tribe with an aboriginal claim to the land that has been confirmed by the courts. 25 U.S.C. 3002(c)(2) and 25 U.S.C. 3002(a)(2)(B) and (C). All construction must cease for 30 days after the discovery of such remains. 25 U.S.C. 3002(d)(1). Although the DEIS mentions the existence of seven known burial sites and the possibility of other "unknown" sites (page 4-112), it does not specifically reference the NAGPRA requirements, nor factor them into its analysis in terms of the costs of construction or otherwise. Moreover, the NAGPRA requirements further emphasize the need for a comprehensive cultural resources inventory before a decision is issued.

9. As the DEIS recognizes, the National Historic Preservation Act (NHPA) is fully applicable to this project by reason of a number of sites within the project area of historic significance, including some of significance to Native Americans. 40 C.F.R. 1502.25 and 36 C.F.R. 800.14 mandate maximum coordination between NEPA and NEPA. Because of the impact of this project upon Northern Cheyenne religious and cultural sites which may be eligible for inclusion in the National Register, we believe that it is critical for the NEPA 106 process to be completed before the issuance of the final EIS. This will allow for the maximum consideration of these issues and the maximum input of the Northern Cheyenne Tribe through the consultation process before a final decision is made and will increase the possibility that the final decision adequately takes these issues into account.

1. Conclusion

In short, it appears that Native American concerns are to a large extent treated in the DEIS as a side issue not fully integrated into the analysis of this project. There is the obligatory description of the impact upon Indian people, but there appears to be little real consideration of that impact in the DEIS analysis. Moreover, there is no analysis in the DEIS regarding the need for this project in general. The "no action" alternative is not seriously considered. The purpose of a DEIS is to evaluate all alternatives, not to justify a predetermined course of action or, as here, to choose between two predetermined options to the exclusion of all others.

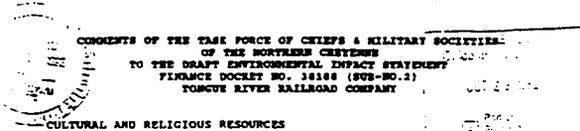
In view of the impact of this project upon Native Americans, particularly traditional Indian people, we urge you to reevaluate the need for this project and fully analyze all aspects of this

issue as described above. Thank you for your consideration of these comments.

Sincerely,


Jack F. Trope

cc: Thomas Ehlers



The Society of Military Chiefs and Headmen is particularly concerned that while the Draft Environmental Impact Statement (DEIS) recognizes that significant impact on the quality of the human environment pertaining to the religious and cultural beliefs and practices of the Northern Cheyenne by the proposed expansion and Four Mile Creek Alternative, the DEIS then seems to suggest that such negative impact can and apparently should be disregarded. In addition, it is clear that substantial information regarding the presence, significance, location, and impact of the proposed project and alternative site is unknown or will ostensibly be learned and somehow anticipated in the future. This situation threatens the very existence of the Northern Cheyenne and cannot be tolerated. As the DEIS states: "The Reservation is viewed as a last sanctuary where the Northern Cheyenne can retain their unique cultural identity. Consequently, protecting the traditional environment of the Reservation is viewed not only as a spiritual responsibility but also as being necessary to ensure the survival of the Northern Cheyenne as a people." (2-18).

The proposed project and its alternative route will violate the Treaty rights of the Northern Cheyenne and the rights of the Northern Cheyenne people under the First Amendment to the United States Constitution and the Indian Religious Freedom Act. The DEIS improperly does not recommend the "no action" alternative.

For example, the DEIS notes that the "revival and preservation of sacred and traditional ceremonies has become increasingly important." (2-8). "The traditional values that many Northern Cheyenne still feel and that are most in conflict with non-Indian values, include a deep respect or reverence for the land..." (2-8).

The DEIS notes that the Tongue River Valley is the locale "of important ceremonial events, such as Ghost Dance-related feasts and sweats held to make the end of the annual winter ceremonies" and that the "[l]ocals of the ceremonies have spirits which remain in place and must be treated with respect." This includes "the localities immediately east of Ashland and Birney Villages (which) appear to be particularly sensitive in this respect." (2-17). The surrounding springs and hills have particular spiritual significance to the traditional Northern Cheyenne. (2-19). The DEIS notes that the relationship of the Sacred Hat Lodge, which contains one of the two covenants sacred to the Northern and Southern Cheyenne, the Sacred Buffalo Hat, could also be disturbed by the proposed railroad construction." (4-112).

Bruce Ellison, Law Office Tel: 605-349-9458
PO Box 2508 Fax " " 1117
Rapid City, SD 57709

The Tongue River, which flows by much of the proposed railroad expansion route, itself has spiritual qualities. It is a ceremonial offering site, a place for the gathering of plants for medicinal and ceremonial use, particularly the "important medicinal root called Big Medicine", and a place where sacred birds and animals live. (2-18; 4-112).

The proposed railroad expansion and the destructive coal strip-mining it will facilitate and permit, will pollute the river with coal, and "will destroy the spiritual tie between the people and the spirit of the river." (2-18). The Northern Cheyenne believe "that there is no mitigation possible for the loss of this spiritual tie." (2-18). While the DEIS proposes that access to these sites be protected (A-25), it improperly chooses to ignore the reality that access to a sacred site whose spiritual significance has been destroyed, is meaningless and will not protect our spiritual way of life.

The proposed expansion and resulting coal strip-mining and resultant alteration and destruction of the earth, "would represent an irreversible spiritual loss."

Despite the known potential for the spiritual and cultural destruction of the Northern Cheyenne by the proposed project, the DEIS recognizes its own inadequacy. The DEIS recognizes that there is currently an inadequate knowledge of the location, purpose, and significance of what it calls "properties of spiritual and cultural value to Native Americans" in the area of the proposed expansion project. (6-3). The DEIS also recognizes that there are burial sites in the project area which are not known and that seven known sites will be disturbed. (4-112). The DEIS notes that "the construction of the proposed extension has the potential to impact an unknown number of cultural resources which have spiritual attributes and/or traditional cultural value. The exact number of cultural resources and sites that would be impacted by the proposed extension cannot be known prior to an intensive pedestrian survey of the impact area because the vast majority of cultural resources have never been recorded." (4-112). The DEIS is therefore clearly insufficient.

The DEIS's solution to its insufficiency is the "current" negotiations regarding a Programmatic Agreement (PA). We strenuously object to the DEIS's proposed limitation that the Northern Cheyenne would not be a "party" entitled to full participation in analysis and decision-making process regarding the effects and propriety of the proposed Project (6-3; A-25), even though it is our sacred sites and practices that will be potentially affected. Asking us to "concur" and give input is to assure us nothing more than lip-service. While the DEIS suggests that "Northern Cheyenne representatives" will be invited to

See Table 2-11.

participate in the inventorying of spiritual and cultural sites, there is nothing to suggest that this will be members of the traditional societies, rather than the tribal government imposed upon us by the United States government in 1924. The Indian Religious Freedom Act requires traditional input. In addition, DEIS says the PA will ask for Northern Cheyenne input into "appropriate mitigation for these resources" (4-3) and yet the DEIS itself notes that input provided to date has related that only the non-construction of the proposed railroad expansion and resulting strip-mining will properly prevent destruction of these "resources". Thus, it appears that Northern Cheyenne input to permit religious practices and beliefs will be listened to only if they do not prevent the project. This violates the Treaty, the U.S. Constitution, and the Human Rights of the Northern Cheyenne.

PURPOSE OF THE DEIS

COMMENT: The DEIS's major purpose is to describe impacts from new coal mines associated with the proposed railroad expansion. However, the DEIS provides little information related to the coal mining impacts. Because the DEIS lacks available information critical to the impact of the proposed mines, potentially serious negative impacts to water resources downflow from the mines, including but not limited to only the Tongue River, and to the biota critically dependent on this water, remain unmitigated.

DEIS: "This EIS, draft and final, is expected to be used...to prepare or review environmental aspects of the proposed rail line (1-6). The principal purpose...will be to transport low sulfur, sub-bituminous coal from mines in southeastern Montana primarily to electric utilities in the Midwestern states (4). With the new railroad, transportation of coal...would become cheaper. This cost advantage would help these mines secure its markets for the future and possibly even gain access to new markets (4-20)...the Tribal government has indicated that the rail line will stimulate increased regional coal mining (4111)."

NEW MINES

COMMENT: The DEIS does not mention any negative impacts resulting from new coal mines until the third chapter of the DEIS. Impacts from new coal development are not mentioned in the Executive Summary, which seems unreasonable considering that later the document makes repeated reference that the principal project impacts are from the new, proposed mines. The fact that impacts from the new, proposed mines are given little or not attention in the DEIS is a major inadequacy that should be addressed.

DEIS: "the greatest impact from the construction and operation of the rail line will be from any associated new coal mine development (A-3)...many of the more significant impacts from the proposed

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railroad actually derive from the new mines (2-14)... Any potential impacts associated with construction of the TRRC Extension are primarily related to the development of coal mines in the project area (4-114)... the construction of the four new mines in the Ashland area -- the proposed Nonce Mine and the potential mines of Cook Mountain, Coal Creek, and Otter Creek (4-49)... The rail line construction could encourage the development of the coal leases immediately east of Birney Village (4-113). Construction of the railroad also would increase the marketability of abundant low sulfur coal reserves located within... the Northern Chayenne Reservation, should the tribe decide to pursue that... development (4-104)."

STUDIES REQUIRING FURTHER INVESTIGATIONS

COMMENT: The following is a partial list of investigations which the DEIS acknowledges are missing from its database. It seems scientifically improper that any decision regarding the significance of the proposed Extension and mining project could be made without the data from these surveys. One survey missing from the list which should be included is a surface and subsurface hydrology study as to quality, quantity, flow rate and direction.

DEIS:

- 1) **CULTURAL:** "A preliminary analysis indicates the presence of possible historical, archaeological and cultural resources within or near the proposed alignments (vii) (as described in greater detail above)."
- 2) **FISH HATCHERY:** As to the Miles City fish hatchery, a proposal is pending with the MOPW to allow TRRC to cross that facility (1-7)."
- 3) **WILDLIFE SURVEY:** "However, the project area from Birney to the Spring Creek Mine site and the Decker Mine sites (approximately 28 miles) have not been formally surveyed for wildlife (2-7)."
- 4) **WILDLIFE WINTERING AND FAWNING AREA SURVEY:** "Pre-construction surveys should be conducted to identify as many of these (deer and pronghorn wintering and fawning) areas as possible (4-85)."
- 5) **GROUND AND UPLAND GAME BIRD SURVEY:** "Locations of dancing grounds (of sharp-tailed grouse) from Birney to the terminus are not well known, so potential impacts to grouse in this portion of the line are difficult to assess... upland game birds... wintering, nesting and brood-rearing areas. These areas could be delineated by pre-construction surveys (4-85)."
- 6) **AIR POLLUTION:** "Background areas of the Tongue River area have not been monitored for PM-10 particulate concentrations (2-26)."
- 7) **BORROW PITS:** "Six of the borrow pits have not been identified... Long term impacts would be mitigated by reclamation (4-8)."
- 8) **WETLANDS SURVEY:** "TRRC proposes to conduct a more detailed wetlands review during final engineering. Specific scraeges would then be determined (4-47)."
- 9) **SOIL SLUMP POTENTIAL:** "The exact nature of the soils, and the determination that it would actually slump, could only be

birds...wintering...areas (4-85)...(FISH) which, if possible and practical...instream work at those times that are (1) least critical to the specific fishery or aquatic resource...sediment transport...Double-shifting of work crews at river crossing sites to minimize the duration of construction activities in or near stream banks (A-18)... (MAMMAL) impacts to deer and pronghorn...mitigated by timing construction so that...important use areas, particularly wintering and fawning areas, are not disrupted (4-85)."

ascertained from detailed, on-site geologic and engineering tests. These tests would be conducted during the final engineering process if the proposed Extension is approved."

- 10) **REVEGETATION PLAN:** "A revegetation plan specific to the proposed ROW corridor should be prepared prior to disturbance (4-23)."
- 11) **BALD EAGLE SURVEY AND BIOLOGICAL ASSESSMENT:** "When endangered species may be present and when these species may be adversely affected by a proposed project, FWS requires the preparation of a Biological Assessment... TRRC will prepare the Biological Assessment (for Endangered Species) during final engineering if the proposed Extension is approved (4-87)."
- 12) **PRAIRIE DOG TOWN AND BLACKFOOTED FERRET SURVEY:** "If the proposed Extension is approved TRRC would conduct a survey for prairie dog towns during the final engineering...If a complex greater than 80 acres is discovered, a survey for black-footed ferrets would be conducted (4-90)."
- 13) **STREAM AND SPAWNING SURVEY:** "TRRC would conduct a three part study plan to identify aquatic resources. The results of this study would be utilized in the development of mitigation plans. This study would include: (a) stream habitat value... (b) benthic macroinvertebrate sampling... and (c) fish spawning survey to determine the importance of the area to spawning of game fish (A-16)."
- 14) **FIRE PREVENTION AND SUPPRESSION:** "The plan would be developed by TRRC after final engineering and overall operation plans are complete (A-11)."
- 15) **ENDANGERED PLANT SPECIES:** "No threatened or endangered plant species or 'species of concern'...have been identified in the area. However, a field search of the alignment should be undertaken during final phase engineering to identify any unique plant species and to implement appropriate mitigation measures (4-83)."

CONSTRUCTION CALENDAR

COMMENT: Timing construction so as to minimize or eliminate impacts to fish and wildlife requires an accurate knowledge of the times of each specific wildlife activity. The DEIS does not present a critical periods calendar, nor even a complete detailing of critical periods by species, in some form scattered through the document. The DEIS presents only some information on a few species of game fish, and even less on waterfowl and endangered species such as the Bald Eagle. The likelihood exists that critical periods for fish and wildlife will occur during the proposed construction period.

DEIS: "The construction season for each year would likely begin in April and end in October, depending on weather (2-2). Some construction-related impacts could be mitigated by scheduling construction so that it does not conflict with (BIRDS) known raptor nest sites...with breeding, nesting, and brood-rearing periods...(in addition to) waterfowl, harons, and other colonial nesting birds and shore birds (4-86)...to upland game

TONGUE RIVER DAM

COMMENT: 1) Peak flow events may provide opportunities for spillway failure before the dam is repaired. Any probability for spillway failure as a result of peak flows, blasting or accident should be evaluated. Peak flows have varied twenty-fold between 2 consecutive years (102 cfs in 1961 versus 2176 cfs in 1962) during peak months of the Tongue River at Miles City.

DEIS: 1) The U.S. Army Corps of Engineers' inspection report of the Tongue River Dam... classified the structure as high hazard. During the flood of May 1978, a discharge of approximately 6,800 cfs in the spillway damaged the spillway to a point where failure seemed imminent. The inflow... was about 17,500 cfs. The original spillway design flood has a peak inflow of 96,000 cfs. The probable maximum flood (PMF) has a peak inflow of 182,000 cfs (4-52).

WEATHER:

COMMENT: 1) Peak storm events provide means of transport for spilled materials, as well as increase the possibility of accidents including derailment through slope failure or other cause. Extreme temperatures or extreme weather may disrupt maintenance/repair schedules, cause equipment failure, or interfere with emergency responses. Extreme weather conditions should be examined in regards to accident rates associated with the project. All of the creeks are subject to frequent flash flooding and most flow occurs during short periods following thunderstorms and during snow melt. Thunderstorms typically occur 40 to 70 times per year, and the probability of a tornado at any given point is about 1 every 3.2 years. Hailstorms, which are a relatively common occurrence in winter, bring high winds, extremely cold temperatures and varying amounts of snow.

DEIS: 1) Precipitation is very light. Most of the annual flow of the Tongue River is derived from seasonal snowmelt... half the annual flow occurring in the period from May to July (2-4). The tributaries of the Tongue River, in contrast, experience their most significant flows during and after precipitation events (2-5). Precipitation in the region varies considerably from month to month. Mean annual precipitation levels range from approximately 12... to 15-16 inches... Approximately one-half... occurs during the period from April to June. A large portion... occurs as thunderstorms. The highest 24-hour precipitation amount at Miles City was 2.74 inches in May, 1908... (From August, 1978, to July, 1980, at the proposed Nonce Mine, shows the wettest months to be May and June and the driest month to be August. The total rainfall... was 8.01 inches (2-22).

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AIP

COMMENT 1) Before the first of four Colstrip mine-to-mouth powerplants began operation in 1975, the region was considered one of the cleanest, most unpolluted areas in the contiguous United States. Now the areas of Colstrip and Ashland are exceeding state and Federal air pollution standards. To conclude that impacts to the project area's air would not exceed law standards because of train operations is not reasonable, because it ignores impacts to air quality from associated coal mining. Impacts from any new coal mines as a result of this project need to be evaluated.

DEIS: 1) "Air quality conditions in the Tongue River are generally considered good (2-26). Impacts to the project area's air quality because of train operations would be below applicable federal and state air quality standards... (and) Class I increments of the Northern Cheyenne (5-5). In the Colstrip and Ashland areas, total suspended particulate concentrations were measured in excess of the Montana and federal standards. The Colstrip area has been designated as a non-attainment area for TSP (2-26). Existing sources for air pollutants in the Tongue River area include the Colstrip Units I-IV coal-fired power plants, the Peabody Coal Company and Western Energy Company coal strip mines (2-26).

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CALCULATION OF ACCIDENT RATE

COMMENT: 2) In calculating the accident rate a national average is assumed, which seems inappropriate even if one only considers the difference between the TRRC's Preferred Alternative vs. the Four Mile Creek Alternative with its admitted 2.5 percent grade safety problems.

DEIS: 4) "An estimate of derailments that might occur on TRRC's preferred alignment and the Four Mile Creek Alternative is based on a derailment rate of 1.00 per million train-miles... The derailment rate was obtained from Corporate Strategies, Inc., which presented the rate as a range, one accident every 400,000 to 1,000,000 miles. The worst case rate was used in this analysis (4-42)... the high scenario of coal production would not alter the estimated accident rates for the crossings... with public roads (4-42).

TRAIN SCHEDULES AND SPEEDS

COMMENT: 5) The high rate of train activity coupled with the need to maintain duty schedules could increase opportunities for accidents. A 50 mph average speed is required to meet legal limits on the 12-hour continuous duty hours for train crews.

DEIS: 5) "(Nine) (Table 7-1)... unit coal trains of approximately 112-125 cars with a design speed of 40 and 50 miles per hour (mi)... (with) High speed "state of the art" Number 20 spring or electric-powered switches... for route diversion at speeds of 50 miles per hour (5-2)... would operate 24 hours a day, 365 days a year (2-8)... The TRRC's current consideration of speeds up to 50 miles per hour for both loaded and unloaded trains would increase the likelihood of trains being to make a round trip within the 12-hour legal limit for continuous duty (2-9).

EMERGENCY RESPONSE PLAN

COMMENT: 6) It would seem unreasonable to assume that assurances of future compliance are enough to form the heart of any emergency response plan, such that TRRC could tacitly assure no decline in water quality with railroad and mining operation. Assurances that TRRC would develop an emergency response plan:

DEIS: 6) "TRRC would develop an internal emergency response plan... The plan would be developed by TRRC after final engineering and overall operation plans are complete (4-11).

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FREQUENCY OF SPILLS

COMMENT: 1) There is inadequate attention given to spill impacts from both proposed railroad activity and mining. Four spills from train derailments are acknowledged as unavoidable, but impacts from these spills are considered non-significant. Evidence suggests that spill frequency may be higher than suggested due to a lack of evaluation of impacts of local topography and weather to train and mining safety. Other evidence also suggests that spill impacts are more likely to be significant rather than insignificant on a local and regional level.

DEIS: 1) "Another major concern regarding public safety is the potential for derailments, fuel spills, and other toxic material spills (4-9)... only three to four derailments may occur along the preferred alignment during the analysis period of 1996-2010... The Four Mile Creek Alternative likely would experience a similar number of derailments - just over four during the analysis period (4-42)... Unavoidable adverse environmental impacts: Approximately four derailments are estimated... during (1996/2010) (5-2)... Vehicle/train accidents could occur at railroad crossings of the FAS 566 and FAS 214, although the possibility is minimal (5-2)... Total grade-crossing accidents = 11 (Summary table).

OPPORTUNITIES FOR DERAILMENT

COMMENT: 2) The accident rates assumed do not recognize any difference in safety risks associated with the admitted difficulties in traveling up or down steep grades, rail lines traversing steep slopes, extremes in weather, travel speed, or other potential variances.

DEIS: 2) "operation of the Four Mile Creek Alternative may increase safety risks (4)... the Four Mile Creek Alternative, however, includes a 2.5 percent grade extending a distance of 2.8 miles. The safe descent of trains on this grade would require rigid operating rules for the control of train speeds. Seven locomotives, operating with full dynamic braking under very heavy brake application, would be needed to hold train speeds to no more than 10 miles per hour. If speeds exceed 15 miles per hour or more, the engineer could lose control of the train (4-44)... The strain on loaded locomotive descending the steep Four Mile Creek grade also would increase the incidence of repairs on rolling stock and motive power (2-11)... The Four Mile Creek Alternative would require 50 percent more fuel to operate... cumulative train fuel during the analysis period would be 27,819,593 gallons (4-47).

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COMMENT: 7) assurances that care or even state-of-the-art methodology would be enough to meet the goals of any plan:

DEIS: 7) "Assurances that techniques and procedures to be employed in cleanup are representative of the best technology currently available (4-12)... Care during refueling to guard against overflows (4-12)... State-of-the-art techniques for fire prevention and suppression would be evaluated and included in the plan as applicable (4-11). TRRC's plan would include... procedures to be followed... directions for most timely response... (and) Locations and inventories of all emergency equipment (4-10)... The TRRC contingency plans for emergencies, including derailments, would... estimate the time needed to get emergency equipment on site... and safe available roads and access points to... emergency response teams (2-10). Methods of containing, recovering, and cleaning up spilled oil (4-12)... (and) Toxic materials spills, TRRC would immediately contain the spill (4-12).

COMMENT: 8) assurances that state and Federal regulations are adequate, reasonable, and technologically feasible, seem highly inappropriate considering the potential severity of impacts should a derailment, spill, fire, or other emergency occur.

DEIS: 8) "A wide variety of state and Federal regulations and permit process are in place to assure that overall water quality is not altered or diminished by activities such as the construction and operation of the proposed TRRC Extension (4-14).

FIRE - EMERGENCY HELP

COMMENT: 9) The evidence suggests that there are a limited number of personnel on trains, (with emergency skills or not); and

DEIS: 9) "The TRRC would utilize two-person crews... There would be no helper locomotives and no cabooses (2-8,9)... The State of Montana has a Hazardous Material Response Plan. In the event of a spill of coal, fuel, or herbicide, TRRC would call a designated telephone number in Helena, Montana to initiate emergency measures under this plan (4-77).

COMMENT: 10) that there are significant difficulties of access for any emergency response team, due to both the isolated nature of the project area, and the long distances from fire and emergency services to the project area:

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DEIS: 10) "Prevention and suppression of railroad caused wildfire is also a potential safety issue (4-8). TRCC could expect one fire per 50,000-170,000 train miles. Experience suggests that most of these fires would be small, rarely exceeding 5 acres. However, given the limited access along the proposed Extension, there is the larger possibility that any fire could be larger than average if not quickly suppressed (4-7)... Fire protection services also represents a problem for the residents in the immediate project area. The only local fire station is at Ashland (2-25)... Medical facilities and fire protection in the general project area are also located in Colstrip, Forsyth and Miles City. The Lane Deer Clinic also provides urgent medical services (2-25)... Railroad crossings would pose an additional safety hazard since passing trains could delay the response of emergency vehicles to either medical or fire emergencies (2-2). Although no emergency services currently are available in the project area, it is possible that any emergency vehicle traveling along FAS 204 or FAS 214 in the vicinity of the railway crossings could be stopped by a TRCC train (4-22).

COMMENT: 1) Minimal mention is made of potential difficulties of a response in bad weather, including but not limited to extreme summer temperatures over 100 degrees, or freezing temperatures well below zero, nor any delays due to communication problems, etc.)

DEIS: 11) "The minimum and maximum temperatures recorded at the Montco meteorological station were -22 degrees F (December 16, 1980) and 102.2 degrees F (July 22, 1980) (2-25)... An additional concern is the intersection of FAS 29 and FAS 27 at Lane Deer, considered to be a major traffic hazard during the winter months (4-24).

COMMENT: 12) No mention is made of difficulties that might be encountered should a derailment occur during spring flood season.

DEIS: 12) "Channel work during periods of high flow (spring runoff) is dangerous (4-75).

OPPORTUNITIES FOR SLOPE FAILURE

COMMENT: 12) Slope failure (slumping) serves as an undiscussed opportunity for derailment. Slope failure above the tracks leading to the placement of debris on tracks, or any track movement due to failure of a slope holding up tracks, might lead to train derailment. Slope failure might also impact bridge or tunnel sites. As 2.5 miles of track are already known to have a high potential for slope failure, it is not unreasonable to assume that these areas may serve as potential sites for train accidents.

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ENDANGERED SPECIES

COMMENT: 1) If wildlife survey information is missing for portions, especially large segments of the project area, it would be difficult at best to accurately assess direct impacts to any endangered species that may be present, or to assess indirect impacts, through the loss of prey species that may be present.

DEIS: 1) "There are approximately 23 miles of the proposed Extension ... where wildlife survey data is listed (4-87)."

BALD EAGLE

COMMENT: 1) The Tongue River is a known eagle use area for both migrants and nesting pairs. While the location of some nests are known, without a detailed survey during critical periods, it becomes impossible to assess risks to this endangered species. Specifically, the number of bald eagles using the area, as related in the DEIS, are unknown.

DEIS: 1) "Bald eagles are known to winter along the open water areas of the Tongue River. Recent survey data indicate that there are two active bald eagle nests in the Tongue River valley (2-9). Recent aerial survey counts found as many as 50 bald eagles along the Tongue River between Miles City and the upper end of the Tongue River Reservoir ... this count probably reflects an influx of spring migrating eagles ... a more typical average count ... would be between 10 and 15 eagles (2-9). One nest was recently located approximately 8 miles north of the Tongue River Dam ... 5 miles west of the centerline of the FOM (2-9). The Four Mile Creek Alternative would avoid this section of the Tongue River Valley (4-87)... a pair of bald eagles reported to hunt between off-reservation Birney and on-reservation Birney Village (4-112).

COMMENT: 2) While the exact location of a few critical use areas are known for one or two pairs of eagles, the location of other critical use areas remain unknown.

DEIS: 2) "The proposed rail line would extend through areas that are used by... bald eagles during the winter months (4-88)... effect of FOM construction would be the removal of trees that could serve as roosting and nesting habitat for bald eagles... (and) loss or displacement of such prey species as fish, waterfowl, small and medium-sized mammals, and ungulates (4-37).

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DEIS: 12) "Shallow soils over weathered shale bedrock on slopes greater than 25% would have a high potential for failure, or slumping, especially when wet... As with erosion potential, slumping potential is of the highest concern where alignments cross sensitive soils and are adjacent to the Tongue River... Approximately 5.2 miles... (to) 4.5 miles of area (4-81st) with moderate to high potential for slumping (4-86)... soil slumping might occur within a small part of either TRCC's preferred alignment or the Alternative (4-7).

COMMENT: 3) Whether eagles would become accustomed or not to project activities is unclear in the DEIS.

DEIS: 3) "Because of increased noise... bald eagles... could be displaced (4-87). Bald eagles could become accustomed to the activities associated with the operation and maintenance of a railroad (4-88)... as the valley narrows, bald eagles and other raptors could choose not to utilize the adjacent habitats because of train-related activities such as noise, potentially lower numbers of prey, and increased human activity (4-88)... construction activities could affect the use of the nest, especially if construction activities occurred in early spring (4-87).

PEREGRINE FALCON

COMMENT: 1) Without a current survey for the presence and activity areas of these birds, it seems unreasonable to conclude that they are not in the project area, especially considering that use has been previously documented. Project impacts could be different than predicted if peregrines are in fact present. Even if peregrines are migratory, exclusion of this use area for the construction period alone might permanently displace this migratory use, impacting populations indirectly.

DEIS: 1) "There is potential peregrine falcon nesting habitat ... However, only one peregrine falcon sighting has been recorded -- that being in March of 1979 during the preparation of the Montco Mine baseline study (2-9)... While falcons may occasionally migrate through the area, the peregrine is not known to hunt or nest in the project area (4-89). There is little reason to expect that migratory peregrines would be negatively affected by the operation and maintenance of the railroad (4-88).

BLACK-FOOTED FERRET

COMMENT: 1) There have been limited or no surveys within the project area for both ferrets or prairie dog towns. Without these surveys, impact assessment is difficult and possibly inaccurate. However, the black-footed ferret has been reported from both Rosebud and Big Horn counties and potential habitat (prairie dog colonies) does exist on and off the Reservation. The presence of the black-footed ferret in areas traversed by the proposed action is very difficult to determine. The ferret is a species which is seldom encountered during the course of investigations utilizing techniques which could reasonably be expected to reveal the presence of the ferret.

DEIS: 1) "There have been no documented sightings... in the project area (2-10). However, prairie dog towns do exist within the project area and, since black-footed ferrets may potentially occur in prairie dog towns, the analysis of direct and indirect effects to the ferrets requires the consideration of effects to prairie dogs and prairie dog towns (4-89).

COMMENT: 2) Consultation alone does not guarantee impact mitigation, especially without accurate survey information.

DEIS: 2) "consultation ... is in progress regarding the potential effects (4).

COMMENT: 3) The DEIS argues that because surveys, strictly within the borders of the Cheyenne Reservation, found a large prairie dog town complex, no impacts would occur outside of the Reservation, essentially because no surveys have been done outside Reservation borders in the project area.

DEIS: 3) "the 10,000-acre prairie dog complex recently located ... (is) known as the Northern Cheyenne complex... However, the possibility that the ROM would be located 1/2 mile -- the parameter established by FWS guidelines -- from the complex... is remote, given that there are few areas where the ROM comes within 1/2 mile of the boundary of the Reservation (4-99)... The identification of the Northern Cheyenne complex, at some point, may be extended to include the prairie dog towns within the Tongue River valley outside of the Reservation boundaries (4-99).

COAL AND OTHER HAZARDOUS MATERIALS

COAL TOXICITY

COMMENT: Coal's toxicity to fish and wildlife and its high solubility is documented in the literature which discusses leachates from coal mines. This is in direct contrast to the DEIS's claim that coal is a non-toxic, insoluble substance. If coal is in fact toxic and soluble, then the projected impacts of spilled coal may be inaccurate within the DEIS.

DEIS: "Coal spills also would occur only in the event of a derailment... Chemical water quality would not be significantly affected, but the coal could interfere with activities such as fish spawning in the Tongue River if it occurred in a shallow area used as a spawning bed (4-76)... low sulfur, sub-bituminous coal (vii)... is a relatively inert and insoluble substance. It is unlikely that there would be any chemical effect to aquatic organisms from coal dust given the limit of exposure of the railroad to the Tongue River (4-82).

PROJECTED COAL VOLUMES

COMMENT: No estimates or mention of impacts from mining 118 million tons of coal from the Ashland area. No estimates on what volume of hauled coal might spill into the Tongue River with four potential derailments.

DEIS: "In 1991 the Decatur mines produced nearly 10 million tons, while the Spring Creek Mine produced another 7.1 million tons. It is anticipated that most of the coal produced from these mines would be hauled on the TRRC to power plants in the Midwest (2-3). Projected coal volumes to be transported by the TRRC ... from existing mines... (by 2010) 15 million tons. In addition, ... 18 million tons annually ... from new mines (2-9). The cumulative haulage from these existing mines is expected to total 291 million tons ... with the addition of 118 million tons from the Ashland mines, the permitted line would haul a cumulative total of 409 million tons from Ashland to Miles City (4-46).

POTENTIAL SPILLED COAL AND CLEANUP

COMMENT: If four derailments are expected during the study period, of up to 12,000 net tons of coal, then it might be assumed that 48,000 net tons of coal could enter the Tongue River over the study period. The impacts of this large quantity of coal on the Tongue River area have not been reasonably addressed. Impacts related to failure to rapidly cleanup spilled coal are not addressed. During the rainy spring high flow periods, the Tongue River will be dangerous to work in, and at these times slopes are more prone to fail, with concurrent derailment potential, and potential

water soluble fraction would be toxic to aquatic life (4-76). Fuel or other hazardous material spills, herbicides, fires and dust could affect waterfowl in the water or on land (4-92). Potential spills of materials such as gas, diesel fuel, lubricating oil, solvent, etc., could negatively affect waterfowl species and shore and wading bird species (4-86).

COMMENT: 2) The DEIS assumes diesel spills would only likely occur with derailment. But with about 1.5 million gallons of diesel to be consumed during the construction of the railroad, the risk of significant spills during construction, as with any related, potentially negative impacts, are not discussed in any appropriate detail.

DEIS: 2) "Construction of the 42 miles of rail line ... would require 1,522,444 gallons (diesel) ... to 1,360,000 gallons (diesel) (4-45,46)... It is estimated that four million gallons of diesel fuel would be consumed to construct each mine. Thus, a total of 16 million gallons would be used to establish all four mines (4-50).

HERBICIDES

COMMENT: 1) The possibility exists that impacts from a herbicide spill, which would last a year or more, could occur at a major spawning site. This might have serious long-term effects to fish populations. In addition, this might affect wildlife further up the food chain. These potential long term problems are not discussed.

DEIS: 1) "Spraying adjacent to streams would create the possibility that overspraying or wind drift could introduce the spray into a stream. There also is the possibility of a spill of this substance (4-76). Should a derailment or a herbicide spill occur near a stream, and should diesel fuel, coal, or the herbicide make its way into the water, water quality would be temporarily impacted (4-76)... toxic levels would be in the immediate vicinity of the spill, but would be quickly dispersed due to the high water solubility of 2,3-D and natural mixing in the stream (4-77)... However, possibly a year or more would be required for aquatic flora and fauna to regenerate (4-76).

COMMENT: 2) The effect of herbicides or range fires on wildlife forage, plant community composition, or revegetation success is not discussed.

DEIS: 2) "Herbicides could damage native plant species and could increase the likelihood of range fires due to the presence of dead and dying vegetation (4-96).

problems with cleanup. High flow periods may provide opportunity for the Tongue River to transport coal an unknown distance, spreading the impact. The significance of different scenarios, including a worst case scenario, should be addressed.

DEIS: "Each car would carry approximately 100 tons of coal, and each train would carry roughly 12,000 net tons (2-9). In the event of a train derailment at one of the river crossings, a large amount of coal could potentially enter the river. Most of the damage that would occur from such an event would be from the coal dust which washes off the coal and increases TSS, and from the impact of heavy equipment operating in the river during the clean-up... If coal were spilled directly into a stream, it would remain in place until removed by cleanup activities or transported downstream (4-76)... assuming a prompt and thorough clean-up of spills, these impacts should be of a short term duration in a limited area of the river (4-32)... The impact of a fuel or chemical spill on the aquatic environment would depend on the type and quantity of chemical spilled, the flow in the Tongue River at the time of the spill, aquatic resources present in the river in the area of the spill, and the clean-up procedures employed (4-81).

OTHER HAZARDOUS MATERIALS

COMMENT: If the TRRC is a common carrier railroad and it is a "short cut" for the transportation of toxic materials other than coal, any impacts that might be expected with accidents spilling other hazardous materials are not addressed.

DEIS: "The TRRC would be a common carrier railroad, and thus could transport materials other than coal (4-44).

DIESEL

COMMENT: 1) The significance and magnitude of potential oil spills on wildlife and fish populations is minimally discussed, considering the potential size of some large spills, the toxicity of petroleum products, critical nature of Tongue River habitat.

DEIS: 1) "During operation and maintenance activities, diesel fuel, coal or herbicides could be spilled into streams (4-76)... diesel fuel spills should occur only in the relatively rare instance of a derailment (4-76). Locomotives would carry a maximum of 7000 gallons of diesel fuel ... and would have less than 1000 gallons of fuel at the river crossings (4-81)... Number 2 diesel fuel, being lighter than water, would coat and destroy plant life, while

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WATER

COMMENT: 1) There is no discussion of the impacts of water use for the rail or associated coal mining. Should wells show lower water levels, or streams or springs have reduced flow due to water use, and these effects are known from other associated mine projects, these might be considered significant impacts and warrant discussion. This may be especially true if greatest water use is during the drier periods when water levels might be low, and when the limited quantity of water present may be critical for survival of plant and animal populations. The 20-year Crow Reservation coal mine had a projected need between 90,000 to 250,000 gallons of water per day. Groundwater levels are known to be lowered adjacent to mined areas.

DEIS: 1) "All perennial streams in the study area are local ground-water discharge points, such as springs and perennial creeks. Therefore, if for any reason an excavation were required in an alluvial area, any effects would be limited to the immediate locale. There would be no effect on ground-water quality or quantity in the shallow alluvial aquifers (A-75)... dust suppression at all work areas within the ROM and at work camps, staging areas, etc., by the use of water trucks... TPFC would conduct dust suppression activities regularly and frequently during the driest periods (A-8)."

COMMENT: 2) The presence of high quality water in the Tongue River is extremely important to discerning any impacts to wildlife, should water quality be lowered or wetland habitat destroyed. The regional and local importance of this high quality water is not discussed. Surface waters adjacent to coal mines in the region have shown declines in water quality. Such evidence must be discussed and evaluated for applicability within the DEIS. Cumulative effects are not discussed within the DEIS. Leachates from the overburden and coal are toxic to humans, livestock, wildlife, and plants.

DEIS: 2) "In contrast to its prairie-originated tributaries, the Tongue River has good water quality because of its reliance on mountain snowmelt... Water quality decreases downstream from the reservoir, as the Tongue River receives flow from the prairie tributaries and return flow from irrigation users (S-5). The Tongue River Basin, a sub-drainage of the Yellowstone River Basin (C-2)... drains an approximately 5,279 square mile area... with an average annual annual discharge of approximately 420 cfs at the mouth (C-11)."

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COMMENT: 4) Because broad, flat, grassy areas of the riparian zone are likely wetland areas, the disturbance of these areas might disrupt the larger wetlands to be found along the Tongue River. Whether or not there would be greater or lesser disturbance in broad and flat or narrow and steep wetland areas may only be accurately assessed from site specific surveys. Regardless, without ground surveys of wetland areas, accurate assessment of impacts to both wetlands and to many dependent wildlife are difficult if not impossible.

DEIS: 4) "These bridges are located ... where the riparian zone is relatively broad, flat, grassy. It should be possible to construct these three bridges with less disturbance as there is sufficient room on both sides of the river for heavy equipment operation... It would be necessary to drive rubber tired heavy machinery into the river in order to construct the cofferdams, piers, abutments, etc (A-72)... The only way to access the tunnel site would be to drive across the river (A-74)."

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WETLANDS

COMMENT: 1) The DEIS assumes that impacts to wetlands would only occur at stream crossings. While stream crossings may serve as entrance sites for silt, soils entering drainages that feed into the Tongue River might provide avenues for silted material to enter the river.

COMMENT: 2) Air photo interpretation may assist in locating wetlands, but alone it is inaccurate and many wetlands may be missed. Only a complete ground level survey can confirm suspected wetlands and rule out other areas. Numerous seeps from irrigated lands, small drainages, and along river banks may serve as locations of functional wetlands. The U.S. Army Corps of Engineers in mitigation work along sections of the Columbia River has encountered numerous wetlands not originally located from aerial photos. Attempts at discussion of whether specific wetlands meet Federal Jurisdictional standards, and have functional value, from aerial photos might be highly inaccurate.

DEIS: 2) "The amount of actual disturbed acres at each location is undetermined but would likely be fairly small... A reconnaissance level (air photo) survey was conducted in March 1990 (A-67)... TRSC's preferred alignment would cross six possible wetland locations, while the Four Mile Creek Alternative would cross two possible wetland locations (S-3)... Seven possible wetland locations on TRSC's preferred alignment were identified during the reconnaissance level survey. There would be three possible wetland locations affected on the Four Mile Creek Alternative (A-67)... TPFC would cross numerous small drainages (A-67)... A very narrow riparian area in marginal condition occurs on both banks. The area may not meet jurisdictional definitions (etc.) (table A-21)."

COMMENT: 3) The DEIS assumes that lost wetland habitat is replaceable. However, the habitat value of constructed wetlands is controversial due to the success rate of created wetlands. Additionally, the functional value of wetlands is more than water surface area, and includes plant species diversity, forage plant availability, coverage, shading, spawning and nesting quality, parameters, etc. These issues are not discussed within the DEIS.

DEIS: 3) "Only specific wetland areas would experience unavoidable impacts with rail line construction. The wetlands habitat ... would remain the same with the implementation of wetlands mitigation by the TPFC (S-2). Mitigation typically takes the form of construction or enlargement of reservoirs, creating a water surface area at least equal to that destroyed by the construction project (A-67)."

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FISH

COMMENT: The Tongue River is a perennial, high quality water source with a diversity of habitats and a high diversity of spawning fish species. This fish habitat is critically sensitive to disturbance because of the limited availability of riparian environments in this semi-arid region and due to its present high utilization by wildlife. The critical nature of this resource should be discussed, especially considering the history of water quality decline associated with coal mining in the Powder River Coal Region. Cumulative regional impacts are also not addressed.

DEIS: "Construction and operation of this alignment could have significant impacts on the river's aquatic ecology (VIII)."

CONSTRUCTION SCHEDULE

COMMENT: 1) The spawning periods are mentioned only for 2 of 21 noted Tongue River fish species in the DEIS, which spans from April to June. Whether the other species have similar periods is not mentioned, and if these species spawn in later months, they may be impacted by a low-flow work schedule. A table detailing spawning requirements by species would be useful. Additionally, no estimates of how long in-stream work would take are provided. If construction periods are long or short, this may influence the significance of impacts.

DEIS: 1) "The construction season for each year would likely begin in April and end in October, depending on weather (C-2). Channel work during periods of high flow (spring runoff) is dangerous. Therefore, most work would have to be done during lower flow periods, when natural TSS concentrations are lower (A-75)... half of the annual (Tongue River) flow occurring in the period from May to July (C-4)... Scheduling construction to avoid conflicting with spawning periods would mitigate... potential impact (S-4)."

COMMENT: 2) Smallmouth bass and four other species are known to spawn in the spring (April to June). This is in conflict with the proposed mitigation construction schedule in Hanging Woman Creek. One would have to assume this was merely an DEIS editing error, and not an oversight in judgment.

DEIS: 2) "If construction occurs near spawning areas in Hanging Woman Creek, impacts could be minimized by scheduling construction at this location from April to June (S-3)."

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COMMENT: 2) Steep slopes associated with areas of bridge construction could provide opportunity for equipment accident, accidental spill, or sediment impacts due to erosion of cut bank. No data is provided to show that bridge construction has no adverse impacts or associated safety risks. The DEIS has information suggesting impacts. Additionally, should a thunderstorm provide a high flow situation during a period that has been, or is normally low flow, this might provide an opportunity for a worst case scenario, which are not addressed.

DEIS: 2) "Bridge construction is not expected to result in adverse impacts to ground-water recharge, wildlife, open space, scientific study, outdoor recreation, agriculture, aquaculture, or forestry within the designated riped plains (4-7a)... Hanging Mean Creek is a known spawning area for salemouth bass and northern pike. It is unknown what percentage of the total recruitment comes from this spawning area. This bridge site also has a steep bank on one side, increasing the probability of sediment entering the stream (4-7b). The Tongue River would experience unavoidable, temporary increases in suspended sediment and turbidity at bridge construction sites (5-7). It is not known if any other spawning areas are located in or downstream from the other bridge crossings. Northern pike spawning habitat appears to be more scarce in the Tongue River and impacts to these fish may be more significant (4-7c).

EROSION AND SEDIMENT

COMMENT: 4) Erosion caused by mining (amount unknown) or the railroad (54,200 - 42,000 tons of soil per year) will increase the sediment in streams and could result in the loss of fish species that require clean gravel for egg laying. Many researchers show that increased sediment loads can decrease fish productivity. These effects may be more important on fish resources than immediate fish kills, and it may be years before they are evident.

DEIS: 4) "The temporary increases in TSS... could result in an out-migration of invertebrate and fish populations in the area of the bridges (5-7). If bridge construction occurs at the spawning site during or immediately after spawning season, the two species could lose eggs and fry present in the spawning area (5-4). Temporary TSS concentrations could be significant during construction of the bridges, but the impact could be mitigated partially by restricting the work (4-7b).

OIL SPILLS

COMMENT: 5) The DEIS makes conflicting statements as to the potential for oil spills in the Tongue River.

spills. Oil spills in river systems would have an adverse impact on aquatic life, especially related areas along the shorelines. Impact on fish can also be expected, especially if the stream is shallow. Natural recovery from damage caused by oil spills in the aquatic environment can take a number of years. Oil and emulsion of oil can adhere to the gills of fish and interfere with normal respiration. The water soluble components of oil may, disable or kill fish.

DEIS: 2) "Unavoidable impacts if accidental spills introduced toxic materials into the Tongue River. Since accident spills would most likely involve petroleum products, the susceptibility of aquatic organisms to diesel fuel and common solvents would be the major concern (5-4). The acute toxicities of diesel fuel and common solvents found in diesel fuel to freshwater fishes are relatively low. Oil spills in open water often do not result in acute fish kills (4-7b). Chronic toxicity criteria to protect freshwater aquatic life have not been developed for all the solvents present in diesel fuel (4-7b). Chronic effects on fish observed after exposure to various oil products include delay in hatching, disruption of feeding behavior, deformed larvae, and an increased rate of respiration, indicating stress. However, the above effects were observed during laboratory experiments when the oil was continuously present (4-7b). There are a variety of effects of petroleum products that have been documented to occur in natural waters after oil spills. These include: 1) acute toxicity to aquatic life, 2) chronic toxicity to aquatic life, and 3) bioaccumulation of products in fish and subsequent tainting of fish flesh (4-7b). Small fish and aquatic invertebrates would be most sensitive to any chemical spills (4-8). The maximum amount of fuel that is likely to spill into the Tongue River at one time during construction would be 1200 gallons (4-7b). This is the amount (1200 gallons) of fuel carried by a "service truck" which fuels heavy equipment. These trucks would also carry approximately 200 gallons of oil, solvents, and other lubricants when full.

HERBICIDE SPILLS

COMMENT: 6) There is no evaluation of impacts from an accidental herbicide spill entering the Tongue River. Considering that the FGM is over 1000 acres, at one pound per acre per month, amounts up to 1000 pounds per month of herbicide may be used. In a worst case scenario, these potentially large amounts might enter the river during shipment or fire accidents. Even if an accident occurs from the river, runoff from an accident might enter the river. These issues are not properly addressed.

DEIS: 3) "The herbicide weed control program would not include a combination of mechanical and herbicide spray (4-8). This would result in an operational herbicide spill.

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weeds near water courses, depending on the time of year (4-24). The possible over spraying and wind drifting of herbicides should not introduce toxic substances into the river in amounts that would be toxic to aquatic life. The impacts of herbicide use could be minimized by the strict adherence to the label instructions and by using herbicides labeled as safe for use near water (4-8). A spraying program would generally spray 2-4D at one pound per acre beginning June 1st and at monthly intervals until late September... near watercourses, weede4 is nontoxic form of 2-4Damine) would be used (4-24).

STREAMBED MATERIAL AND RIP-RAP

COMMENT: 7) No streambed material should be used in any construction activity. Use of this material would destroy habitat for aquatic life. The use of streambed material is not discussed in the DEIS. The use of rip-rap is mentioned in the DEIS. Rip-rap will also destroy habitat for aquatic life, and this impact is not discussed.

DEIS: 7) "rip-rap is required for stream bank stabilization (4-14).

SPAWNING

COMMENT: 8) The Tongue river has local and regional importance due to the quantity and quality of its fish resources. The significance of any loss or damage to this regional resource is not addressed.

DEIS: 8) "The Tongue River is primarily a salemouth bass fishery. There is a backwater area near the proposed bridge for the Four Mile Alternative that could be a salemouth bass spawning and rearing area. The mouth of the Tongue River is a spawning stream for Yellowstone River shovelnose sturgeon, burbot, paddlefish, and blue sucker. Northern pike, also a popular sport fish, are also found in the river. The reach of the Tongue River... also contains rainbow trout and a few brown trout. The rainbow trout fishery is maintained with hatchery stock and little over winter survival occurs (4-8b). Falls and runs are the most common habitat types. In 1980 a survey found over 50% of the reach between Ulter Creek and Hanging Mean Creek to be composed of runs (2-11).

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WILDLIFE

HABITAT

COMMENT: In a 1981 BLM report the Tongue River areas are rated Critically Sensitive because of the large numbers of animals dependent on a limited amount of river habitat. The DEIS completely ignores discussing the critical dependency of most plant and animal species on the limited surface water supplies. In the DEIS does acknowledge the high quality of some habitats and wildlife populations. The DEIS does not discuss the likelihood nor impact of any worst case scenarios. There is no discussion of impacts from new coal mines, which would provide significant negative impacts.

DEIS: 1) (Wildlife populations utilizing the wide range of habitats along the Tongue River are diverse (vii). During wildlife surveys conducted on the Montco study area from 1978 to 1980, 120 bird species, 25 mammal species, 5 reptile, and 4 amphibian species were recorded (2-7). (Construction and operation of the rail line would change the landscape of the Tongue River valley, an area now undeveloped and natural, with few people and isolated ranches (4-11). Direct impacts would include... loss of animals due to collision with trains and maintenance vehicles, creation of a barrier to some species, potential damage or elimination of habitat by dust, herbicides, or fire, and disturbance to nearby animals (4-8).... should the construction season extend into the winter during periods of higher stress, construction could affect the mortality rate of area wildlife (4-8a).

FOUR MILE CREEK

COMMENT: 2) The advantage of the Four Mile Creek Alternative because it avoids important winter habitat must be balanced against increased opportunities for derailment and spills due to the steeper rail grade.

DEIS: 2) "Adoption of the Four Mile Creek Alternative, since it bypasses the section of the river that does not freeze, could reduce the negative impacts to waterfowl, wading and shore birds (4-92)... this section of the river is considered to be most sensitive and vulnerable to potential negative impacts for the proposed rail line construction and operation (viii).

IMPACTS

COMMENT: 3) The claim that impacts from project activities on local populations would be unmeasurable seems unreasonable low considering the critical sensitivity of the habitat, the high numbers of wildlife present in concentrated areas, and the large amount of fuel available. In addition, no mention of coal mining impacts are

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mentioned. Long-term impacts in the Colstrip area are measurable and include a decline in mammalian diversity, interruption of migratory routes of deer, and declines in the carrying capacity of a larger area than that disturbed by mining.

DEIS: 7) "Fires, dust, noise, increased activity, and potential fuel spills... should not affect local populations (4-82). There could be some negative impacts to predators and furbearers from vehicle and train collisions, increased hunting, trapping, and poaching, displacement, potential spills of hazardous materials, and loss of habitat due to fires. There should be an unmeasurable effect on local populations (4-92).

REPRODUCTIVE SUCCESS

COMMENT: 4) It is interesting to note in the DEIS that wildlife populations are so sensitive that reproductive success would be negatively influenced by increased camping and hunting by workers and their families. If wildlife are so extremely sensitive to hunters, shouldn't wildlife populations show long term negative effects due to mining, construction, and railroad activities?

DEIS: 4) "Increased recreation pressure (such as camping and hunting) associated with the construction work force (and potentially, their families) could further displace wildlife and could negatively affect reproductive success (mortality) (4-84,85).

FENCE

COMMENT: 5) The right of way along the Tongue river will effectively serve to separate wildlife from what is a normally a perennial water source. This could have the significant negative effects on land carrying capacity by limiting survival of newborn, young or adults.

DEIS: 5) "TRPC would construct ROW fencing along the entire line. The cattle passes would consist of an oval, corrugated metal structure, approximately 11 ft. high and 12 ft. wide at the base (4-3).

(FOURHOORN) "If the ROW were fenced in such a manner as to exclude domestic livestock (especially calves and sheep), this would represent a barrier to movement of pronghorn... daily and seasonal movement of the larger populations of pronghorn... could be disrupted or stopped... (and) represent a net loss to the pronghorn population (4-81)....

(DEER) "The mule deer herds (are) essentially non-migratory... most of the year deer use... uplands and break areas... with the abundant forage of shrubby coulees, steps and grasslands... During the heat of summer months, when upland vegetation becomes desiccated, mule deer

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PRONGHORN POPULATIONS

COMMENT: 10) The local exclusion of pronghorn by ROW fencing might affect regional pronghorn population levels by lowering regional carrying capacity due to the critically nature of the Tongue River habitats. This in turn might affect other species of wildlife, such as predators, which depend on interactions with pronghorn.

DEIS: 10) "Pronghorn are reported to winter in the area, and migrate... 70 miles or more (2-8)... pronghorn could be excluded from the ROW by some fencing configurations designed to protect domestic livestock. Pronghorn movements in the area south of the confluence of Four Mile Creek with the Tongue River particularly could be disrupted by ROW fencing (5-4).

NOISE IMPACT

COMMENT: 11) At a 24 hr/day and 240 days/yr schedule, scraper use in construction would occur for approximately 4 to 5 years. Any condensation of the schedule for scraper use to weekday daylight hours during the warmer parts of the year suggests an extremely noisy, intense work environment. Impacts to wildlife due to this level of intrusion have not been fully evaluated in the DEIS. Effects of increased noise from associated new mines have not been addressed. Should the construction schedule extend into winter months, increased stress during this critical mid-winter period may adversely affect pregnant cows and does resulting herd productivity (i.e., reabsorption of embryos, an increase in aborted fetuses and still births; birth of weak calves and fawns that have a reduced chance of survival).

DEIS: 11) "A worst case assumption was made that all construction activities would occur with a scraper... the total number of hours of scraper use would be 28,715 hours (4-92)... (to) 46,208 hours (4-94)... all major noise production activities during construction to occur during the weekday and daylight hours (4-9). Without road traffic and operating farm machinery, rural ambient noise levels range from 20 to 40 dBA (2-28). Noise levels from heavy machinery... would range from 52 and 74 dBA at a 500-foot distance and between 54 and 67 dBA at a 2,000 foot distance (4-97). By (2010), assuming an operation of 10 trains a day, these readings could increase to 62.3 dBA (4-98). The following distances were calculated: a 55-dBA contour equalled 2370 feet; a 55dBA contour equalled 240 feet; and a 70-dBA contour equalled 87 feet (4-100). The rural residents living within the 55-dBA and 65-dBA contours would primarily experience annoyance from the passing trains... (40) years) would be required to produce a hearing loss (4-101). Blasting in the ROW... is not anticipated, although chances may be set to fracture material (4-102).

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HUNTING

COMMENT: 6) The cattle underpasses, serving as a major access pathway to the Tongue River water sources and foods, may serve as places for predators or hunters to wait for wildlife. As underpasses will be few and far between... predators or hunters can effectively kill or bar entrance to some wildlife species or individuals for as long as the predator or hunter is present. This may discourage wildlife use of the area, permanently lowering populations. These effects are not discussed in the DEIS.

DEIS: 6) "Indirect impacts would include... increased poaching and hunting (4-82). If the county road is improved... the ROW could decrease reproductive success, add stress to wintering animals and compromise the year-round use of some important habitats (4-81). Many (42) species of small mammals have been trapped or observed in the vicinity of the project area (2-9).

COMMENT: 7) The ROW, whether located or not, will provide trespass for some hunters because of the easy access to the area using the ROW, and these long-term impacts are likely and conflict with the DEIS.

DEIS: 7) "Since access to the ROW would be limited to TRPC employees after construction of the railroad, long-term trespass problems should not occur (4-71).

COMMENT: 8) There is no mention of impacts from the temporary construction camps. Considering that these camps would total 80 acres, some significant impacts might be expected.

DEIS: 8) "An additional 80 acres would be affected by the establishment of two temporary construction camps proposed (5-1). TRPC would require its contractors to police construction camps (4-4).

DEER POPULATIONS

COMMENT: 9) Both short- and long-term impacts from associated coal mining relative to habitat loss, decline in habitat quality, and declines in water quality and quantity are not directly addressed or evaluated in the DEIS. The size and significance of any negative impacts should be discussed considering the history of decline in deer populations as a result of regional coal mining.

DEIS: 9) "While the number of animals (deer and pronghorn) that would be affected is unclear, it appears that deer and pronghorn populations would be reduced as a result of the construction and operation of either... Alternative (4-11). The overall impact of construction-related displacement on local deer populations should not be great and should be relatively short-term (4-82).

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PLANT COMMUNITIES

COMMENT: 1) Without surveys in the project area to identify endangered plant species, it seems unreasonable to conclude that these species do not exist in the area.

DEIS: 1) "No threatened or endangered plant species or "species of concern"... have been identified in the area. However, a field search of the alignment should be undertaken during final phase engineering to identify any unique plant species and to implement appropriate mitigation measures (4-82).

COMMENT: 2) There is no mention of a plant survey having been done of the project area. Because there are 10 known habitat types in the project area, this might indicate a high diversity of plant species and plant species might be of value to wildlife. The DEIS does not contain a complete plant species list or table, nor a plant community map, both of which would assist in an analysis of habitat value. Standard Habitat Evaluation Procedures (HEP) are commonly available through state or Federal wildlife specialists.

DEIS: 2) "Ten general vegetative types are located in the project area (2-6)... including the associations of pine/juniper, grassland/sagebrush, agricultural, prairie, deciduous tree/shrub, and breaks... (and) cattail/sedge, also referred to as aquatic (5-4).

COMMENT: 3) Impacts regarding the collection of medicinal or religious plants are difficult to assess without a plant survey and plant community map. Survey information would allow for an understanding of whether proposed disturbance areas contain species that are rare locally, and whether any other areas might serve as alternative collection areas.

DEIS: 3) "Medicinal plants are collected along the banks of the river (2-28) (25 plant species listed in Table 2-11, as used by the Tribes). Wild plants such as Sweetgrass, Big Medicine and cattails, which are important for medicine or religious ceremonies, are regularly collected from the valley on the east side of the Tongue River... one or more traditional localities for collecting ceremonially significant plant resources may be disturbed or eliminated (4-111).

COMMENT: 4) The amount of land to be directly impacted is not clear in the DEIS. Different land use sections calculate different total land use amounts. Conversions of ROW (space and miles) leads to different ROW average widths that

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written. All of these differences could be significant in estimating environmental impacts of land use and reclamation requirements. For example, a 42-mile ROW with an average width of 200 ft would impact 8413 acres. Conversely, a 42-mile ROW of 637 acres would have an average width of 122 feet.

DEIS: 4) TRC's preferred alignment would directly impact about 627 acres of vegetation (4-8)... a 42-mile Extension which would follow the Tongue River ... a minimum of 75 feet to a maximum of 200 feet, the right-of-way (ROW) width would average 200 feet (2-11)... Land Use: Eight of way acquisition (acres) 1,248 (40.2 miles) - 1,258 (50.2 miles) (Table 2-2).

COMMENT: 5) The DEIS concludes that potential soil erosion is of low significance, which seems inappropriate considering 1) that erosion rates are expected to be high, especially on steep slopes, 2) the volume of earth to be cut and moved is large, 3) the volume of soil estimated to be lost is high, and 4) the potentially serious significant impacts that could result to fish populations from increased sedimentation, especially during low flow periods and/or at spawning sites.

DEIS: 5) Initial erosion rates are expected to be moderate to high due to soil characteristics, slope steepness, and precipitation regime (4-6). Construction of the 42 miles of rail line ... would move 10,217,323 cubic yards ... to 12,421,000 cubic yards of material (4-6). An estimated 54,200 tons (4) ... 62,000 tons of soil per year may be lost. Potential soil erosion is estimated to be of low significance over the length of the ROW during construction (4-6).

COMMENT: 5) While the DEIS admits that slope steepness has a significant effect on erosion rates, no emphasis is made as to why it is important. It is important to establish that high erosion rates on steep slopes could have high impact potential. Steep slopes with high erosion rates will continually dump sediment, possibly into spawning areas, impacting fish and invertebrate populations. Steep slopes with high erosion rates over a long period might fail during a peak storm event, resulting in train derailment or an accident leading to a spill of materials.

DEIS: 6) Prompt implementation of erosion control measures is critical to minimizing erosion potential... This is particularly critical for areas adjacent to the Tongue River... slope steepness plays an important role in the potential for erosion due to runoff. Where slopes exceed 15%, erosion potential would be high... several locations

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DEIS: 9) "The principal impacts ... would be caused by the use of herbicides, range fires, and possibly coal dust... fires could have a long-term beneficial effect on the area vegetation. TRC, however, plans to implement a rigorous program of fire prevention and suppression along its ROW... little effect on vegetation is expected from coal dust ... (4-9)."

As to the inadequacy of the analysis of the potential environmental consequences of the proposed Expansion in the DEIS as to water resources, the Society of Military Chiefs and Headmen hereby incorporates the comments and authority in the attached paper published in the Environmental Impact Assessment Review, entitled, "Review of a Coal Strip-Mining EA: The Accuracy of An Analysis," by Richard Ellison.

These Comments are

Respectfully submitted,

Bruce Ellison

BRUCE ELLISON
P.O. Box 2508
Rapid City, S.D. 57709

Attorney for Steve Brady
Coordinator
Task Force of Chiefs and
Military Societies of the
Northern Cheyenne

are of concern because of their proximity to the Tongue River... these locations are on very steep slopes with little floodplain or riparian area to buffer potential sediment delivery (4-6)... Due to the steepness of the bank on the south side of the Hanging Woman Creek at the bridge site, TSS could increase significantly, if proper precautions are not taken (4-7).

COMMENT: 7) There is no discussion of the likelihood of revegetation success, which requires soil surveys, which have not been done, or of the history of revegetation attempts in the area, nor the potential impacts should revegetation not succeed. Failure of revegetation on steep slopes could have impacts ranging from increased sedimentation in the Tongue River to complete slope failure and train derailment.

DEIS: 7) After grading is completed, reclamation work would commence with the distribution of topsoil on side slopes. Areas would be seeded and mulched, and silt fences, plastic netting and other silt control devices would be applied. Erosion areas, maintenance yards and ROW disturbances would be revegetated (2-8).

COMMENT: 8) Opportunities for revegetation failure have only limited examination in the DEIS. No examination of the potential for a worst case scenario are found. It is possible that soil compaction and/or a toxic soil during bridge construction, adjacent or on a steep slope, might lead to revegetation failure. Revegetation failure might lead to slope failure.

DEIS: 8) "Establishment of a healthy vegetation cover would be critical to minimizing long-term adverse impacts (4-6e). Biological impacts would occur in most salvaged or disturbed soils (4-6f). If a soil's water holding capacity and aeration decreases because of changes in its physical properties, soil-plant relations would be adversely affected (5-2). Impacts could also be associated with toxic substances from fuel spills or vegetation control measures ... could potentially reduce the vigor of desirable native or reclamation species (4-6g).

COMMENT: 8) The DEIS does not mention if range fires could have any short or long-term negative effects on plant populations, or present any evidence as to why coal dust would not impact vegetation. At minimum, plants do take up leachates from coal, incorporate them into plant tissues, and these compounds may be toxic to wildlife if consumed. Range fires may remove native vegetation and allow weedy non-native species to colonize disturbed sites.

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**REVIEW OF A COAL STRIP-MINING EA:
THE ACCURACY OF AN ANALYSIS**

RICHARD L. ELLISON

The following review is a critique of selected water resource topics from an environmental assessment (EA) on coal strip-mining in eastern Montana. These topics include (1) mining impacts on water quality and quantity, (2) the effects of land reclamation on groundwater resources, and (3) impacts on wildlife and plant populations due to changes in water quality and/or quantity. The review does not serve the purpose of identifying potential mining impacts that require management planning which may be absent within the study EA. The review is also intended to advocate the importance of being guided by scientific methodology in the writing of environmental impact analyses.

Environmental Assessment Science

The National Environmental Policy Act of 1969 (NEPA) requires that an environmental impact statement (EIS) be written for any federally approved project. However, NEPA has few guidelines concerning the preparation of EISs (Lorenz et al. 1978). If an EIS or EA is to be considered a credible scientific document, it must contain a reasonable, complete, referenced review of the pertinent literature. An Environmental Protection Agency (EPA) study concludes, "now EISs provide less data than are useful to decision makers or the citizenry because of the way they are written" (Lorenz et al. 1978). Some EISs are criticized as not being scientific documents because of unwarranted extrapolations of data (Schroeder 1974), because statements or conclusions are made that are unsubstantiated by data (Bartlett et al. 1982), or that important relevant literature is unincorporated. If an EA lacks an adequate information base of up to date problems (Orman 1984), opportunities to mitigate impacts may be lost.

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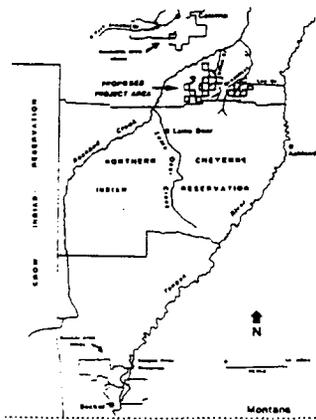


FIGURE 1. Project site map. Source: Modified from BLM, Miles City Office, Undated Map.

The article analyzes the EA for the Northern Chrysean Exchange, Greatfork-Miller Creek Coal Area (hereafter EA/NCE), a report about a coal strip mine in eastern Montana. It demonstrates that the EA repeatedly makes important conclusions with either incomplete or no evidence. Additionally, some such evidence, as well as aspects on local coal strip-mining impacts, which conflict with conclusions of the EA, are readily available within other publications from the same Bureau of Land Management (BLM) office that wrote the EA/NCE as well as other local government and scientific journals. Because the EA/NCE lacks available information critical to the impact of the proposed strip mine, potentially serious negative impacts to water resources downstream from the mine, and to the biota critically dependent on this water, remain unrecognized.

The Proposed Strip Mine

The 1983 Environmental Assessment for the Northern Chrysean Exchange, Greatfork-Miller Creek Coal Area was prepared by the Miles City District Office of the Bureau of Land Management, US Department of the Interior (EA-MT-020-733-78), as part of procedures required to issue a mining lease to Peabody Coal Company in exchange for a lease Peabody had on the Northern Chrysean Reservation (BLM 1983).

The Greatfork-Miller Creek lease area is about 12 miles southeast of the town of Colstrip in eastern Montana (Figure 1) and includes about 80 square miles (BLM 1983). Natural topography ranges from gently rolling hills to steep, 350-foot-high ridges, with elevations of 3,000 to 4,100 feet. The borders of the lease area include the Tongue River to the east, Rosebud Creek to the west, and the Northern Chrysean Indian Reservation to the south. Greatfork and Miller Creeks flow directly into Rosebud Creek, and Lay Creek, also in the mining area, flows directly into the Tongue River. Rosebud Creek and the Tongue River flow directly into the Yellowstone River, the largest and longest undammed river in the contiguous United States (Hickson 1983).

Reserve estimates of the Miles-Crowfoot Creek coal area are 410 million tons (BLM 1982), although the Peabody Company lease under consideration is only for 130 million tons (BLM 1983). Although lower in heating value than most eastern US coals (approximately 5,600 Btu/lb compared to 12,000 Btu/lb, respectively) (BLM 1983; Hickson 1982a), this Powder River coal is valued for its low (0.1 percent to 2.5 percent) sulfur content. The Sawyer and Rosebud coal seams are each 10 to 30 feet thick and are considered economically mineable. The overburden for these two seams is less than 500 feet, with rocks of the Paleozoic Tongue River Member of the Fort Union Formation exposed at the surface (BLM 1982, 1983). Other coal seams exist at various depths but are considered too thin for profitable recovery (BLM 1983).

The Water-Energy Conflict

Because of the seasonal nature of the region (about 13 inches rain/ft/year), water demands for both strip-mining (30 acre feet/million tons) and electric power generation (150,000 acre feet/year/1000 megawatts) (Hickson 1982a) have a history of conflicts with agriculture and community needs in eastern Montana (BLM 1982; BLM 1979, 1981; Hickson 1980, 1982a, b; Thomas and Klarech 1979). Significant effects on the hydrology of the Tongue River basin are a direct result of the rapid development of its coal deposits (Hickson 1982a, b). Attempts by the state to regulate water quality and quantity problems generated the Montana Water Use Act of 1973, but allocation conflicts are still being worked out (Hickson personal communication) and water quality continues to decline.

Before the first of four Colstrip mine-to-month coal-fired powerplants began operation in 1975, the region was considered "one of the cleanest, most unpolluted areas in the contiguous United States" (cf. EPA 1974; DMES 1976; DNRC 1975; WES 1973, in Brummettsch 1978). Because over 30 percent (66 billion tons) of the known US coal reserves reside in Montana's share of the Powder River Coal Region (Thomas and Anderson 1976), its present status is now changing. Continued development of Montana's Powder River Coal Region is complicated by the 1984 start-up of the Colstrip Unit 4 mine-to-month powerplant and the proposed Greatfork-Miller Creek strip mine.

The Crucial Role of Water Resources

Although many issues need to be addressed in any environmental assessment, especially mining from the EA/NCE is some sense of understanding of the crucial role water plays in terrestrial natural habitats. The 1981 OI and Gas EA of the BLM Leasing Program comments: "The areas of Rosebud Creek and the Tongue River are considered Critically Sensitive riparian areas. Riparian habitat in the Miles City BLM District associated with major rivers and drainages is extremely valuable because no other vegetative communities are capable of supporting the variety of species in the total number of streams." Both Greatfork and Miller Creeks drain directly into Rosebud Creek, while Lay Creek drains into the Tongue River, and it is precisely within these drainages that the strip mining will occur.

Analysis of the EA

Impacts to Surface and Groundwater Quality

The EA/NCE suggests that leachates from the crushed rock may contain between 100 and 1000 mg/l of manganese, iron, sodium, and bicarbonate (cf. Van Vleet et al. 1977 in BLM 1983). Other local documents (NRC 1979; USGS

1977, 1979) suggest leachates will also contain relatively large amounts of manganese, arsenic, potassium, and alkaline earth metals, and other trace metals, including molybdenum and selenium. In the EA/NCE Van Vleet, et al. (1978) is cited as predicting that it may take several hundred years for the waste rock to be treated free of susceptible leachates. As a result the shallow ground-water may not be possible for several hundred years after the mining is over and the evaluation has been oriented in mining pits and attempts at revegetation have been made.

In contrast, the EA/NCE also argues that no significant changes in surface water quality will occur as a result of the mining because discharges from pit water holding ponds must satisfy Montana mine pollution discharge regulations. No other evidence is cited and no evidence is presented to support the claim that pollution discharge regulations are technologically feasible and/or are not easily met. There is no discussion of possible surface water quality declines due to other mining processes such as leachates from tailings piles. This is important due to the declines in water quality found in the Powder River region as a result of coal development (USGS 1977, 1979b; Bronshteyn 1980; Hickox 1982b).

The decline in surface water quality in the Tongue River basin is exemplified in Calvary, Montana (USGS 1977), 10 miles north of the proposed mining (Figure 1). In East Fork Arrow's Creek, concentrations of dissolved sulfates, chlorides, and other compounds are higher in the creek near Calvary, and, in general, the quality of the water does not meet public drinking or irrigation standards (USGS 1979a). Studies in the West Doctor Mine, 30 miles south of the Greatwood-Hilder Creek watershed, indicate a significant decline in ground-water quality, predominantly from the movement of leachates from mining spoils (Hickox 1982b). Water from the Doctor Mine is high in sulfates, iron, carbonate, and sulfur. Occasionally arsenic at high levels are found, they are considered residuals from the ammonium nitrate explosives used at the mine. Effluent from the East and West Doctor mines was produced in 1974 in excess of total dissolved solids in the neighboring Tongue River Reservoir above 12 mg/l and sodium by 2 mg/l (cf. Van Vleet (1974) in Hickox 1982b). Fluoride is also found in some coal-washed rocks, and no records of dumping near water ways near Arrow's Creek (10 miles southeast of Calvary) is considered a possible cause of localized high fluoride levels in leachates (Bronshteyn 1980, 1981).

Perhaps the EA/NCE's line of argument is that without runoff there can be no pollution of local streams. In the chapter on "Affected Ecosystems" the EA/NCE states the mine would result in Greatwood and Hilder Creeks are only 0.05 inch. "Very little of the mining production from these two sources leaves the area directly, in runoff. Most returns to the atmosphere through the processes of evaporation and transpiration. A small amount enters regional surface channels to recharge in the ground water table" (EA/NCE). However, LeVings (1982) reports the mean annual runoff for Greatwood and Hilder Creeks was 36 acre-feet and 48 acre-feet, respectively, with 110 acre peak flows of 110 cubic feet

because of the leachate of water quality decline in the Powder River Coal Region for a number decline in surface water quality) as a result of the proposed strip mine in the Greatwood-Hilder Creek coal area. However, are possibilities for lower water quality is not discussed in the EA/NCE. Any opportunities to ameliorate a surface water quality problem have been missed. As the region is presently undergoing extensive development of its coal reserves (Hickox 1982), it is important to address any cumulative effects of this development (Chase, 1984), and cumulative effects are not discussed in the EA/NCE.

Impacts to Groundwater Quality

The EA/NCE states that in the mined areas, shallow ground-water aquifers will be disturbed either by digging away the aquifers or by cutting into them and draining the water (BLM 1983; USGS 1977, 1979a). Because many aquifers are unconsolidated, ground-water levels within a few feet of the mining face boundaries will be lowered (BLM 1983; USGS 1979a). The fall in ground-water levels will depend on how much the decreased aquifer contributes to the local ground-water supply, on the direction of flow, and whether the location of ground-water discharge is changed. For example, at the Doctor Mine in southeastern Montana, at least three 3 foot water levels dropped 10 feet within 11 miles in the direction of ground-water flow from the mine (USGS 1977). The EA/NCE concludes that ground-water levels should return to "near premining levels" after reclamation and that surface impacts would not be significant.

The EA/NCE claims that surface impacts would not be significant if strictly dependent on two assumptions. The first is that "if" hills are no mining can be replaced by drilling and deeper aquifers, and second, that "if" hills are replaced, specifically impacts on Calvary's water supply and sewage systems, would not be significant. The effects of the loss of shallow aquifers in the mined areas on neighboring surface shallow aquifers is not discussed in the EA/NCE. There have been complaints by farmers in the Calvary area of wells "going dry" since the strip mining began (Bronshteyn 1980). Any potential value of shallow ground-water or wells on the Northern Chrysean Reclamation or otherwise adjacent to the mining is not addressed. For example, the EA/NCE does not discuss potential effects of the loss or change of shallow aquifers on local streams or springs. Springs are the only perennial surface water source in the mined area (LeVings 1982), and springs have dried up in several areas near mines (Hickox unpublished manuscript).

The EA/NCE also states the Calvary's water supply is dependent on deep, not shallow, wells and there is no evidence that deep aquifers would be affected by coal strip-mining. The EA/NCE does not discuss any potentialities whereby damage to deep aquifers might occur. Investigations in the nearby West Doctor mine indicate reduced vertical flows between coal beds doubled the five year peak hydraulic gradient area, ground-water into the mine from all directions

per second (left) and 100 cfs for each creek, respectively. Additionally, Lay Creek, alone in the mining area, had a mean annual runoff of 300 acre-feet and a one-year peak of 110 cfs (LeVings 1982). Hickox (1982b) suggests that using only mean flow rates as an indicator of flow volume can be misleading because flows have varied twenty-fold between 2 consecutive years (182 cfs in 1981 versus 2176 cfs in 1982) during peak months of the Tongue River at Hilder City, Montana. "There are several short-term events which could be averted by water surging through the channels. The peak flow of the small tributaries seems to occur in January or February when Chinook winds push the snow on the ground. Most of the run-off comes from snowmelt streams whose paths across the basin are highly erratic and unpredictable" (Hickox personal communication). Peak runoff events might act as periods where leachates entering Greatwood or Hilder Creeks could enter the Tongue River. New mining leachates from the Greatwood-Hilder Creek watershed, in addition to impacts from other coal strip mines in the Tongue River watershed, could have serious cumulative effects.

To understand the origin of leachates, a brief outline of the mining process is necessary. Typically, in the process of coal strip-mining, surface water drainage, streams, and stock ponds are discovered as mining pits cross their paths (USGS 1979a). The water-bearing rocks and the coal itself are blasted, removed, and stockpiled. As a result of the increased surface area of the crushed rock compared with the original rock, a greatly increased erosion rate occurs (USGS 1979a). New man-made water drainage, dams, and ponds are constructed to contain waters entering the disturbed area because water of the soluble chemicals leaching from the overburden and coal is toxic to humans and livestock. Unfortunately, underground in the EA/NCE, the reconstruction of stream channels through spoils is problematic and not successfully demonstrated in practice (USGS 1979a). The alternative, the use of holding ponds for runoff, will likely further contaminate the leachates (USGS 1977). LeVings (1982) believes that man-made surface water drainage designed for rapid transmission of surface water would mitigate mining impacts. However, what rapid water removal might reduce the magnitude of leaching impacts locally, it may result in increasing the amount of water supplied to leachates over time.

Other EIS (USGS 1977, 1979a) on coal strip-mining in eastern Montana theorize if a dam holding water from a mining operation is successfully operated by Manning or an accident, the release of the water would impact the quality of both surface water and ground-water in the direction of the flow. Another report (NRC 1979) comments that it best we do not know enough about the complex interactions which cause the detrital, movement, and retention of trace elements from coal wastes. The EA/NCE itself admits that while secondary ground-water "The spread of pollutants from the reclaimed area is difficult to assess in practice."

As surface water resources in coal strip mines in eastern Montana has shown a decline in quality (USGS 1977, 1979a; Hickox 1982b), such evidence must be developed and explained for application to what the EA/NCE. Potential effects

(Hickox 1982b), increasing the quantity of water impacted by the mining operation. A defense BLM report (1979) suggests that water quality in deep aquifers could be permanently lowered if lower quality water from a neighboring aquifer flows into and replaces the remaining higher quality water. Additionally, if large quantities of ground-water were pumped from such aquifers, the ground above the aquifer might collapse, destroying the underlying aquifer (BLM 1979).

Also not mentioned in the EA/NCE is how repeated shock waves caused by blasting of the coal might create new fractures in the rock, damaging shallow aquifers and increasing local ground-water flow (USGS 1977, 1979a), potentially affecting local surface and/or ground-water levels.

In addition, impacts from water use in coal mining processes are not addressed in the EA/NCE. Large amounts of water are used in coal mining, with much of it sprayed on burning rocks in coal dust. A 30-year Crow Indian coal mine in eastern Montana had a projected total between 90,000 to 120,000 gallons of water per day (USGS 1977). Most of the water was to be derived from the Madison Limestone Formation, lowering water levels and pressure for an unknown distance around the well (USGS 1977). The EA/NCE does not evaluate or discuss the impacts of water use from the mining process. As the Crow project was expected to have a serious effect on local water supplies, similar effects from the Northern Chrysean Exchange project may be likely.

Land Reclamation: WB Water Return

The EA/NCE claims ground-water levels will return to normal levels after mining reclamation. Van Vleet et al. (1978), in BLM (1983), is cited for studies on Calvary and Doctor mines which "indicate the occurrence and flow of ground-water in mine spoils is not greatly different from premine conditions" (EA/NCE). However, a USGS report (1979a) contends that there are many unresolved problems associated with recharging shallow ground-water. The recharged mining spoil, because of its broken condition compared with the original rock, will have more passages for water to flow through (USGS 1977). If the broken media allow more water to flow through the ground faster than the original rock, that will decrease ground-water flow patterns and could reduce the amount of water the aquifer can store (BLM 1979). Different ground-water discharge pore: might also result, spring flow might be less in the summer, and greater in the winter and spring, than it was originally (USGS 1977). Whether new springs will appear after reclamation is not mentioned in the EA/NCE, nor is the water quality of any new springs likely to be in levels considered safe for livestock or wildlife if ground-water becomes contaminated by mining leachates.

It is also suggested in the EA/NCE (cf. LeVings 1982) to EA/NCE that special reclamation techniques "would maintain infiltration and water flow through the spoils. Decrease maintaining the change in water quality in down-gradient aquifers." However, elsewhere in the EA/NCE it is mentioned that 36 percent

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of the area to be mined is most poor as to suitability for reclamation, with 33 percent rated fair and only 11 percent rated good. There is no discussion in the EA/NCE as to potential impacts to water resources should reclamation fail, and the evidence presented indicates that reclamation failure is a possibility. Reclamation has yet to be demonstrated as feasible (Hickox unpublished manuscript).

Effects on Wildlife and Plants

The EA/NCE concludes that the only impacts to wildlife include the destruction of three important sheep-ranch grazing lands, and that protecting sport fishing requires that enough high quality water reach the Tongue River and Reached Creek. No reference is made to evidence presented to support the claim that sport fishing would not be affected, nor is there any discussion of nonpoint fish treatment of the water quality issue. It is concluded that "care must be taken to assure the continued quality of water reaching the Tongue River and Reached Creek." No reasoning is presented as to what that water is important, nor is the likelihood that "care" is enough to mitigate long-term impacts, nor comments as to the local history of water quality degradation as a result of strip mining (Hickox 1982). Wildlife and plant populations are directly dependent on the amount of water supply in the Powder River Coal Region (BLM 1981) and of coal mining reduces surface water quality to levels toxic to plant and wildlife populations, then it would be reasonable to assume some significant impact to wildlife might result.

In the 1981 BLM report on Tongue River and Reached Creek areas are more critically sensitive because of the larger numbers of animals dependent on a limited amount of over-bank. The EA/NCE completely ignores discussing the critical dependency of many plant and animal species on the limited surface water supplies, which is a disturbing consideration that the concluding report is from the same BLM office in Miles City, Montana that authored the EA/NCE. A 1978 survey on the Northern Cheyenne Reservation showed 85 subways of observed one creek, river, and spring areas (BMA 1980), and populations of what called deer, mag-nificent pheasant, and many for many mammals are also almost entirely dependent on plants and water supplies for their year-round food and cover needs. These areas also provide seasonal habitat for numerous birds that they called grouse, pheasant, and Mountain partridge. The USGS (1979a) notes that Colby area habitats contain lower populations of game mammals than surrounding habitats, and long-term impacts on the Colby area include a decline in mammalian diversity, concentration of migratory routes of deer, and declines in the carrying capacity of a larger area than that disturbed by mining. A 1978 EPA report notes, "These grounds exhibit limited resistance to disturbance, and there is thus a potential for irreversible effects" (Loren et al. 1978). When water sprayed on mining roads to control dust eruptions, dust settles on below on units which vary either in chemical plant growth (USGS 1977).

that is, there is a history of water quality decline associated with coal development in eastern Montana, that is not addressed in the EA/NCE. Any cumulative effects of the project associated with other energy development projects in the region are not addressed. The critical dependency of many plant and wildlife species on the limited water supply in the study areas is also not discussed. Fish, fowl, rivers, as well as others, may act as means for the spread of toxic chemicals. Damage by toxic leachates and/or low flow to critically sensitive riparian or spring habitats may severely impact plant and wildlife populations. Reclamation of mined areas is not likely and in any case will not replace the source of the water consumption. As a result of these accumulated errors within the EA/NCE regarding mining impacts to water resources, opportunities to mitigate impacts to wildlife and native plants may have been missed.

I read James S. Shaw, David H. Hickox, Leslie H. Mason, and Gordon H. Owen for their valuable comments and advice on this manuscript. I also thank Dr. Peter Loren for technical assistance. This research was funded in part by the Department of Energy at Washington State University.

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Toxic leachates could have long-term impacts by disrupting or eliminating plant and animal populations (USGS 1977, Wickman 1977). Forest plants growing on a western coal mine spoils are shown to take up and store leached materials in amounts sufficient to cause metabolic imbalances in cattle or sheep (NRC 1979). Experiments show 1) in 4 weeks in such conditions, cattle, horses, swine, and deer in whom grass grown on coal mine spoils compared with normal soils. Selenium will kill chickens at 1.5 to 10 ppm or mice at 5 ppm (NRC 1979, Wilber 1982), and selenium has been found in riverwater near the Savage mine in eastern Montana in concentrations as high as 6 ppm (NRC 1979).

The physical destruction of local riparian could have major effects on fish that are not discussed in the EA/NCE. Streams that depend on groundwater seepage into streambeds will show lower water levels (USGS 1979a). Springs and wells could dry up because low springs in the area previously receive more than 2 gallons per minute, and any additional drop in groundwater level will likely stop these flow entirely (BLM 1979; USGS 1977; USGS, 1979a). If streams, ponds, seeps, and springs are lost, animals will die as they will try to move to another area that may already be supporting the maximum number of animals it is capable of due to limited food, water, and cover (USGS 1977). Natural key meadows were lost when springs were mined (Hickox unpublished manuscript). Erosion caused by mining will increase the sediment in streams (USGS 1979a) and could result in the loss of fish species that require clean gravel for egg laying (BLM 1979). Stream-bottom insects, plants, and other food sources for fish may be lost due to increased sedimentation (WDG 1982).

The lack of any discussion in the EA/NCE on such effects of leachates or of the increased flow of sediments and silt is inappropriate when considering the relative destruction of water and wildlife populations and the history of coal-related water quality degradation. Because the issue of water resources and wildlife is inadequately addressed in the EA/NCE, opportunities for the mitigation of future problems may be lost.

Conclusion

"The purpose of the EIS process, for better or for worse, is not to stop projects but to identify the probable adverse consequences to such mitigation efforts can be planned and implemented" (Owen personal comm.). If an EA or EIS is to be utilized as a scientific document for predicting the effects of a project, it must at least contain a reasonably complete, referenced review of the available literature. Any governmental agency authoring an EA or EIS should at minimum be aware of publications produced within its own office, as well as any major, peer-reviewed studies performed by other federal or state agencies which cover its target region.

Information from governmental and scientific journals suggests the significant damage to surface water resources will occur beyond the mined area.

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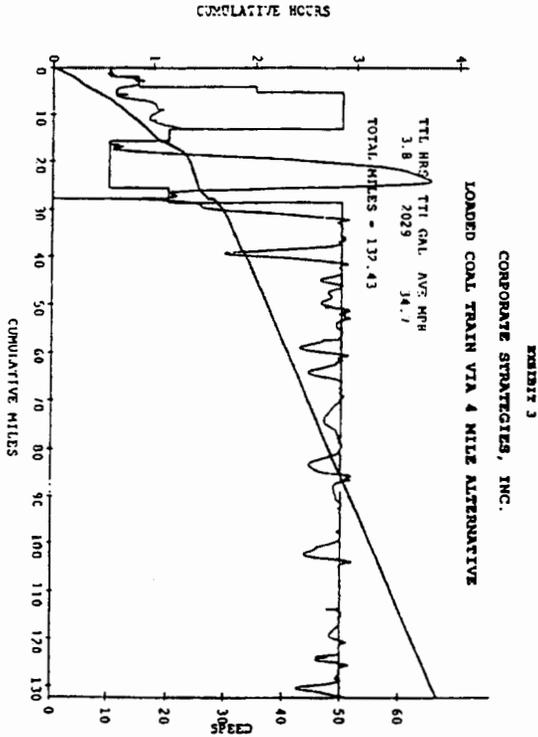
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**EXHIBIT 4
SUMMARY OF ADDITIONAL DIRECT OPERATING COSTS
ATTRIBUTABLE TO THE "FOUR MILE ALTERNATIVE"**

Item	Unit	Quantity	Rate	Total Cost
Additional Capital	1000	1000	1.25	1250
Additional Fuel	1000	1000	1.25	1250
Additional Maintenance	1000	1000	1.25	1250
Additional Labor	1000	1000	1.25	1250
Additional Power	1000	1000	1.25	1250
Additional Water	1000	1000	1.25	1250
Additional Grease	1000	1000	1.25	1250
Additional Oil	1000	1000	1.25	1250
Additional Tires	1000	1000	1.25	1250
Additional Lubricants	1000	1000	1.25	1250
Additional Repairs	1000	1000	1.25	1250
Additional Spare Parts	1000	1000	1.25	1250
Additional Insurance	1000	1000	1.25	1250
Additional Security	1000	1000	1.25	1250
Additional Training	1000	1000	1.25	1250
Additional Safety	1000	1000	1.25	1250
Additional Environmental	1000	1000	1.25	1250
Additional Other	1000	1000	1.25	1250
Total Additional Direct Operating Costs				12500

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing letter and the four exhibits referenced therein have been served upon all parties listed below by mailing a copy thereof, first class mail, postage prepaid, this 29th day of December, 1992:

Governor Stan Stevens
ATTN: Wayne Phillips
Capitol Station
Helena, MT 59620

Michael W. Sloszak, Esq.
211 South Leitch Avenue
LaGrange, Illinois 60525-2162

Kevin Broder, Esq.
Brotherhood of Locomotive Engineers
1370 Ontario Street
Cleveland, OH 44113

William Mahoney, Esq.
Donald F. Griffin, Esq.
Highway, Mahoney, & Clarke, P.C.
1015 17th Street, NW
Suite 210
Washington, DC 20036

James T. Mular
Chairman
Montana Joint Rail Labor
Legislative Council
440 Roosevelt Road
Butte, MT 59701

Teresa Erickson
Northern Plains Resource Council
419 Stapleton Building
Billings, MT 59101

Gordon P. MacDougall, Esq.
United Transportation Union
1025 Connecticut Avenue, NW
Washington, DC 20036

Steven M. Chestnut, Esq.
Elonzi, Chestnut, Varnell
2102 4th Avenue
Suite 1230
Seattle, MA 98121

Joseph Guerrieri, Jr., Esq.
Joah S. Lichtblau, Esq.
Guerrieri, Edmond & James
1331 F Street, NW
Washington, DC 20003

David M. Schwartz
David M. Schwartz

TONGUE RIVER RAILROAD COMPANY

3500 POLY DRIVE
Billings, Montana 59102
(406) 233-8881

October 20, 1992

Ms. Elaine Kaiser, Chief
Section of Energy and Environment
Room 3214
Interstate Commerce Commission Building
12th and Constitution
Washington, D.C. 20423

Re: Tongue River Railroad Company's Comments to Draft Environmental Impact Study on "Construction and Operation of an Additional Rail Line From Ashland To Decker, Montana", (Finance District No. 30186 (Sub-No. 2))

Dear Ms. Kaiser:

This letter is in response to the Section of Energy and Environment's (SEE) request for comments on the Draft Environmental Impact Statement (DEIS) for the Tongue River Railroad Company's (TRRC) proposed rail line from Ashland to Decker, Montana. The TRRC generally agrees with the conclusions of the Environmental Protection Agency (EPA) reviewers, who found that the DEIS "was a well constructed NEPA document." (John F. Wardell, Director, Montana Office, EPA to Dana Whue, SEE September 16, 1992). The analysis is presented in a clear and concise manner, and it is fully responsive to the National Environmental Policy Act (NEPA) (42 U.S.C.A. §§ 4321-4361) Council of Environmental Quality (CEQ) regulations (40 CFR §§ 1502), and other applicable federal statutes and regulations.

Notwithstanding the detailed discussion of impacts in the DEIS, the SEE has specifically "urged" TRRC to provide additional information from the TRRC on the cost and operational problems with the Four Mile Creek Alternative route (DEIS, p. ix). The TRRC believes that construction of the rail line along this route will increase the construction and operational costs of the railroad. More importantly, it will also lead to a dramatic increase in safety problems for the railroad and unacceptable and unnecessary environmental impacts.

The TRRC has responded to the SEE's request for additional information by undertaking an analysis of the operational aspects of the railroad on the Four Mile Creek Alternative. Using various computer simulations, TRRC consultants have determined that loaded unit coal trains