running over the alternative route constitute a serious safety hazard with potential for life threatening accidents.

Before discussing the results of this study, however, the TRRC offers a few additional comments on aspects of the DEIS. These comments are warranted because of the environmental issues raised at the oral hearings on the TRRC's Application in August. We respond here to certain questions raised at these hearings by providing additional information for the record. A more lengthy and point by point response to issues raised both at the hearings and in various written comments to the SEE will be incorporated into TRRC's Post Hearing brief to the Commission due November 2, 1992.

The TRRC Rail Line Does Not Cross Indian Lands and Will Not Lead To Unacceptable Impacts To The Interests of The Northern Cheyenne Indian Tribe.

The TRRC has stated on numerous occasions that the proposed rail line does not cross tribal land. At its nearest point, the railroad would be nearly a mile east and across the Tongue River from the eastern border of the reservation. The DEIS properly and correctly addresses the Commission's responsibilities with regard to the Northern Cheyenne Tribe (DEIS, p. 4-113). Where tribal land is involved in a project, approval of the Tribe and the Department of the Interior would be required. However, such is not the case here. No federal entity or the Northern Cheyenne Tribe itself has ever suggested that the TRRC must seek its authority to cross any of the lands required for the railroad. As the TRRC has noted many times throughout these proceedings, title to all of the lands that will be acquired for the right-of-way is held by either private individuals or federal or state governments.

The TRRC has had numerous discussions with Northern Cheyenne tribal officials regarding this project. We have indicated our willingness to work with the Tribe to address social and economic concerns that relate, not only to this project, but to planned coal development within the region. The TRRC encourages the participation of the Tribe in "on-the-ground" cultural and other surveys of the final alignment and in the meetings of the Multi-Agency/Railroad Task Force that will be addressing the coordination of wildlife mitigation measures. All of these points are noted in the extensive mitigation plan that has been accepted by the TRRC. (DEIS, Appendix A). The TRRC believes that i , cmentation of these and other measures adequately address the Northern Cheyenne concerns with respect to this project.

Environmental Concerns Regarding Impacts From Railroad Caused Range Fires Have Been Exaggerated.

The potential for range fires caused by passing TRRC locomotives was raised repeatedly by witnesses at the oral hearing. Although this issue was raised earlier at the scoping meeting for the DEIS, it assumed a larger perspective at the hearings. Part of the reason for the prominence of concern for fires may have been a recent news article referred to by a number of witnesses at the public hearings stating that a statewide study of range fires had been conducted by the Montana Department of State Lands (MDSL). This study reportedly noted railroads as the most frequent cause of fires in the state (Forsyth Hearing Transcript, p. 37).

No such specific study exists. The newspaper article referenced at the hearings was misleading. The document referred to in the article is a "Fire Prevention Plan" for the MDSL Central Land Office. This area only includes Lewis and Clark County, which is located more than 250 miles west of the Tongue River Valley. The study is not pertinent to eastern Montana, since no comparable data exist for much of that part of the state.

Moreover, a cursory review of the actual statewide fire data available from MDSL suggests a wholly different conclusion than that implied by witnesses at the oral hearings. Lightning strikes caused the greatest number of fires in Montana between 1981 and 1991 (47.8%). Debris burning by landowners and others was the second greatest cause of fires (11.7%). Of the nine known causes of fires in the state during the period, railroad operations resulted in one of the lower occurrence of fires (5.4%) (See attachment A, MDSL, "Wildfire by Major Fire Category-Percent: 1981-1991", Missoula, Montana).

As important as the statistics on the percent of fires caused by railroads is data on the acreage burned by railroad-related fires. Montana DSL data indicates that of the 346,436 acres burned in the state by "person-caused fires" during the period 1981-1991, only 2,604 acres were attributed to railroads -- less than 1%. Even this figure is somewhat skewed because of one 1,700 acre fire that occurred in Lincoln County in west-central Montana in 1987. Correcting for this anomaly, railroad-related fires average 4.2 acres in size. This is a figure slightly less than that used in the DEIS as an average size of fire that could be predicted on the TRRC Extension. (See attachment B, MDSL, "State-Wide Acreage, Person Caused Wildfires by Major Fire category: 1981-1991", Missoula, Montana). Using available information from comparable railroad operations on the Montana Sarpy Creek and the Wyoming Orin Junction lines, the SEE

estimates that fire occurrence would be one fire every 50,000 to 170,000 train miles. On average, train-caused fires would not exceed 5 acres in size (DEIS, 1992, 4-47).

Despite the inaccuracies in witness statements at the oral hearings, concerns about train-related fires remain (Lame Deer Hearing Transcript, p.14, 39, 46; Forsyth Hearing Transcript, p. 36, 52, 55; Sheridan Hearing Transcript, p. 65). These concerns have been addressed in the DEIS. The TRRC recognizes that any fire could be disastrous for the individual landowner. It has previously agreed to develop a fire prevention and suppression plan for the railroad in accord with accepted fire prevention practices for railroad. The prevention part of the plan would include the adequate maintenance of rolling stock and locomotive power. It would be enhanced by the fact that equipment used on the railroad would be new, as would the trackage used to construct the project. The effect of adequately maintained equipment on the reduction in train-related fires was noted by Miles City Fire Chief Leonard Smith, who testified that BN-caused fires had actually decreased over the last few years because of better maintenance on that railroad (Miles City Hearing Transcript, p. 32-34).

The suppression aspect of the plan would include an identification of access points along the alignment and the location of grade crossings and gates at key locations, where access may now be a problem (DEIS, 1992, A-11). The plan also would include an evaluation of existing fire suppression equipment in the area, along with expected response times. In discussions with local landowners, the TRRC may also negotiate the placement of fire suppression equipment at strategic area ranches, which would not only assist in the suppression of train-related fires, but would markedly improve the state of existing fire-fighting equipment now available to area ranchers.

The Four Mile Creek Alternative Is Unacceptable From A Safety, Operational and Cost Perspective.

The SEE has recommended the Four Mile Creek Alternative as its preferred alignment for the TRRC rail line. The SEE bases this recommendation on the fact that the alternative would avoid the 10 mile reach of the Tongue River immediately below the Tongue River Dam. Construction of the alternative also would obviate the need to construct five bridges and a tunnel across this 10 mile stretch of the river. Possible environmental impacts to wildlife, to the Tongue River Reservoir State Recreation Area and to Cormorant Estates would be avoided according to the DEIS. (DEIS, p. viii-ix).

The TRRC believes that the SEE's recommendation largely ignores the operational, safety and cost problems associated with the Four Mile Creek Alternative. The TRRC's studies document that the selection of the alternative route would lead to unwarranted costs and environmental problems.

TRRC engineer, Daniel Hadley, of Mission Engineering, states that the alignment is almost 10 miles longer than the TRRC's proposed routing. This would result in the disturbance of over 100 additional acres of land. Although there would be some cost savings to TRRC associated with the construction of bridges and a tunnel on the proposed route, that savings would be more than lost in the additional earthwork and trackage requirements for the Four Mile Creek Alternative. Mr. Hadley's calculations suggest that the alternative would cost the TRRC an additional $8.5 million dollars to construct. (See Attachment C, Verified Statement of Daniel R. Hadley).

Of more concern to engineer Hadley is the extent of adverse grade that would occur with the Four mile Creek Alternative. He notes that loaded coal trains would leave the Decker/Spring Creek mines and would travel at adverse grades ranging from 0.594% to 1.553% over a distance of 12.67 miles. Once trains reach the top of the Four Mile Creek drainage, they would descend the next three (3) on a -2.31% grade. In Mr. Hadley's opinion this would present an unsafe operation and certainly violates the design criteria for coal-hauling railroads. (Verified Statement of Daniel R. Hadley).

Mr. Robert Lielich of Corporate Strategies, Inc. (CSI) undertook an in depth analysis of trains operating on the Four Mile Creek Alternative using a computer model. Lielich found that the standard configuration for the TRRC operation of three (3) locomotives would be inadequate to *hold* trains operating on the three (3) mile descent along Four Mile Creek. CSI's Train Performance Calculator (TPC) indicated that an engineer operating a loaded coal train descending this steep grade would not be able to hold the train on the track. Given the proximity of the Four Mile Creek grade to the Tongue River, one would undoubtedly expect such a derailment to cause untold property damage and coal spillage into the river. (See attachment D, Verified Statement of Robert H. Lielich).

Lielich performed another analysis of the Four Mile Creek operation, this time using seven locomotives, "cut-in" to the 110 car train at various locations, to hold trains descending this grade. As noted in his verified statement, Lielich found that an engineer would need to apply full dynamic braking and heavy brake applications to hold the trains to 10 miles per hour.

If dynamic braking was lost on two (2) or three (3) units, or if speeds increased by even five (5) miles per hour, the engineer would lose control of the train. Such a margin for safe operation is entirely unacceptable in Lielich's expert opinion. (Verified Statement of Robert H. Lielich).

Robert Lielich also looked at the operational costs of the TRRC running trains on the Four Mile Creek Alternative. Operating costs would rise because of additional operating time, fuel costs, and locomotive power. The costs to the TRRC from using the alternative would be $22.30 more per carload (34%) than operating trains over the proposed alignment.

The TRRC believes that these studies document that the Four Mile Creek Alternative is not feasible. It will cost more to construct and to operate. More importantly, the TRRC could not ensure that trains operating on this alignment would be able to operate in a safe manner. The margin for operational error or equipment failure would be too small in the opinion of the TRRC.

The TRRC also believes that the Commission's preference for the Four Mile Creek Alternative is not supported by the analysis of potential environmental impacts. The distance from the confluence of Four Mile Creek to the Tongue River Dam is approximately four (4) linear miles. However, because of the sinuousities of the river, the river length is approximately 10 miles to the foot of the dam. The proposed TRRC alignment would cross the river five (5) times during the 10 mile traverse. However, for more than half of the distance, the rail line would be greater than 1/8 of a mile from the river. Indeed, by the time the alignment reaches the Tongue River Dam, it is approximately one mile west of that structure. The TRRC suggests that the distance of its alignment from the river will substantially reduce the negative environmental impacts associated with its proposal.

Moreover, The TRRC believes that implementation of the detailed 25-page mitigation plan included as Appendix A in the DEIS will adequately protect the environmental resources along the proposed alignment. The TRRC notes that a recent study of potential impacts to the aquatic and wildlife resources associated with rehabilitation of the Tongue River Dam suggests that the upper 50 miles of the Tongue River could be "de-watered" for the summer months during the two-year dam construction period. The U.S. Fish and Wildlife Service, as well as other state and federal agencies apparently find this an acceptable level of impact, since they conclude that the fishery and associated wildlife could also be rehabilitated in the area. (See Attachment E, USDI, Fish and Wildlife Service, "Fish and Wildlife Coordination Act Report

For The Tongue River Dam Rehabilitation Project, Montana," April 1992). The TRRC fails to see how its proposed alignment, which would be 1/8 of a mile or greater from the Tongue River for much of its traverse of this 10 mile stretch, could be less mitigable of river resources than would a project that plans on a lengthy "de-watering" of the river. We call upon the agency to explain this discrepancy.

The TRRC is committed to working with the Commission, private landowners, and agencies to implement the mitigation plan presented in the DEIS. Given the operational and safety problems associated with he Four Mile Creek Alternative, the TRRC believes that its commitment to an environmentally safe operation along the proposed alignment, as demonstrated by acceptance of the mitigation plan, warrants Commission approval of this route under provisions of NEPA.

Sincerely,

Thomas E. Ebzery, P.C.
Attorney for Tongue River Railroad Company

TEAw/
Attachments A, B, C, D, E

ATTACHMENT A

Page 1

DSL Wildfires by Major Fire Category - Percent
1981 - 1991

	Area						
Major Category	CE	ES	NE	NW	SE	S-	Count
ARSON	1.7%	0.0%	0.0%	0.8%	0.0%	3.4%	2.3
CAMPFIRE	8.0%	0.0%	0.0%	11.3%	0.0%	8.6%	8.2
DEBRIS BURNING	5.9%	0.0%	5.3%	16.0%	4.3%	8.7%	11.7
EQUIPMENT	2.7%	17.6%	0.0%	3.1%	8.7%	3.7%	3.5
FIREWORKS	0.0%	0.0%	0.0%	0.1%	0.0%	0.0%	0.0
LIGHTNING	48.1%	76.5%	57.9%	42.8%	69.6%	53.8%	47.8
MISC.	20.2%	5.9%	31.6%	17.0%	21.7%	14.7%	16.8
POWERLINE	0.9%	0.0%	5.3%	1.3%	0.0%	0.6%	0.9
RAILROAD	11.4%	0.0%	0.0%	2.5%	8.7%	6.7%	5.4
SMOKING	2.2%	0.0%	0.0%	5.9%	0.0%	1.5%	2.2
UNKNOWN	0.0%	0.0%	0.0%	0.3%	0.0%	0.2%	0.2
Count:	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0

ATTACHMENT B

[illegible] Person Caused Wildfires by Major Fire Category
[illegible]

Major Category	Year											
	81	82	83	84	85	86	87	88	89	90	91	Total
ARSON	[illegible]	0.50	25.30	1.20	1,370.10	14.00	0.80	104.50	0.00	[illegible]	[illegible]	[illegible]
CAMPFIRE	1.30	7.20	123.40	61.30	[illegible]	0.00	248.00	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
DEBRIS BURNING	178.30	[illegible]	1,452.70	14.00	47.50	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
EQUIPMENT	881.50	2.00	0.00	25,952.00	16.70	2.00	14.30	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
FIREARMS											[illegible]	[illegible]
MISC.	[illegible]	12.90	[illegible]	[illegible]	718.10	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
POWERLINE				[illegible]	[illegible]	0.30		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
RAILROAD	[illegible]	2.10	111.50	[illegible]	45.00	21.00	1,757.00	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SMOKING	0.10	7.14	0.50	272.20	[illegible]	0.00	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]											[illegible]	[illegible]
Total:	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

ATTACHMENT C

BEFORE THE
INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 30186 (Sub-No.2)

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

VERIFIED STATEMENT OF
DANIEL R. HADLEY

My name is Daniel R. Hadley. My home address is 674 Tabriz Drive, Billings, Montana. I am President of Mission Engineering, Inc. of Billings, Montana which provides engineering consulting services to the Mining and Transportation Industry. Prior to managing Mission Engineering, Inc., I served as Manager of Design and Construction for Kaiser Coal Corporation between 1984 and 1987. My duties included administration of studies to develop more efficient coal handling and transportation systems for enhancement of Kaiser's coal reserves.

I received my Master of Science in Civil Engineering from the University of Utah and am a registered professional engineer in Montana and five other western states.

The Interstate Commerce Commission, Section of Energy & Environment, has made a preliminary recommendation in its Draft Environmental Impact Statement favoring the "Four Mile Creek Alternative" over the "Preferred Alignment" of the Tongue River Railroad Company (TRRC).

In making this recommendation, the Section invited specific testimony or comments from the TRRC as to the constraints of the "Four Mile Creek Alternative". These constraints include but are not limited to: design criteria, length, safety, operational issues, and cost.

Mr. Robert Leilich President of C.S.I. has prepared a verified statement on the previous issues and my testimony will be limited to the design criteria, length, grade, and costs associated with the Four Mile Creek Alternative.

Tongue River Railroad "Extension" - "Four Mile Creek Alternative"

DESIGN CRITERIA:

The design criteria for the "Preferred Alignment" is the same criteria which was used for the design for the original Tongue River Railroad. The original alignment was designed to facilitate the operation of unit coal trains of 115 to 125 cars with design speeds between 40 and 50 miles per hour. It was, and is now, estimated that two locomotives would be sufficient to operate over this preferred alignment, but three locomotives may be used to insure smooth operations. The design has included the following:

- Maximum horizontal curvature of 3 degrees;
- Minimum tangent distance between horizontal curves of 200 feet;
- Maximum grade against empties of 1 percent compensated for curvature;
- Maximum grade against loads of 0.52 percent;
- Maximum vertical curvature shall be 0.05 feet per 100 feet in sags and 0.10 feet per 100 feet at summits.

It is very important to note that the "Four Mile Creek Alternative" does not meet the above criteria with respect to grade, speed and number of locomotives.

LENGTH:

The length of the "Preferred Alignment" is 40.3 miles. The additional length of the "Four Mile Creek Alternative is 9.75 miles which represents a total length of 50.05 miles. This additional length represents greater construction, maintenance and operational costs.

GRADE:

From Mile Post 50.05 to Mile Post 37.16 the "Four Mile Creek Alternative" has adverse grades (against loads) in excess of 1.55%. Specifically, loaded coal trains will have to climb 626 feet in elevation with varying adverse grades from 0.594% to 1.553% over a distance of 12.87 miles. After this alignment reaches the top of the Four Mile Creek drainage it then descends 883 feet down Four Mile Creek until it reaches the "Preferred Alignment" at Mile Post 38.56. In this decent between Mile Post 32.04 and Mile Post 25.23, there is 3.19 miles of a -2.31 percent grade. As discussed in Mr. Leilich's Verified Statement, this steep grade with loaded coal trains represents an unsafe operational situation with the high probability of loosing control of the train.

COST:

The estimated cost of the Tongue River Railroad with the "Preferred Alignment" for the Extension is $233,033,100. The additional cost for the "Four Mile Creek Alternative" is $8,456,800, which represents a new total of $241,489,900 for the project. A breakdown of the additional costs are shown in Table A.

TABLE A

COST ITEM	PREFERRED ALIGNMENT	FOUR MILE CREEK ALT.	COST DIFFERENCE
Engineering & Design	$ 15,867,000	$ 15,867,000	$ 0
Mobilization	1,400,000	1,400,000	0
Movement of Existing Utilities	3,000,000	3,000,000	0
Civil (Earthwork)	66,717,008	78,018,308	11,299,300
Major Structures (Highway & Railroad Bridges, Tunnel)	20,215,000	9,800,300	(10,414,700)
Minor Structures (Cattle underpasses, Culverts)	13,637,108	13,681,308	44,200
Signals & Communication	8,007,900	8,007,900	0
Rail, Switches, Ties, OTM, Ballast, Installation	79,175,200	85,596,500	6,421,300
Buildings	650,000	650,000	0
Fencing & Signs	1,943,184	2,074,984	131,800
Contingencies	18,837,000	19,020,852	83,852
TOTAL	$229,349,428	$236,914,950	$ 7,565,524
OPTIONS			
Full Fabric Treatment	3,410,540	4,235,700	825,160
Rail Grinding	273,182	339,250	66,068
TOTAL INCLUDING OPTIONS	$233,033,100	$241,489,900	$ 8,456,800

Daniel R. Hadley

STATE OF MONTANA)
) ss:
COUNTY OF YELLOWSTONE)

Daniel R. Hadley, being first duly sworn, deposes and says he has read the foregoing statement, knows the contents thereof, and that same are true and correct as stated.

Daniel R. Hadley

SUBSCRIBED AND SWORN TO before me this 19th day of October, 1992.

(SEAL)

Notary Public for the State of Montana.
Residing at Billings, Montana.
My commission expires 2-17-95

ATTACHMENT D

TONGUE RIVER RAILROAD COMPANY

CONSTRUCTION AND OPERATION
OF AN ADDITIONAL RAIL LINE FROM ASHLAND TO DECKER, MONTANA

VERIFIED STATEMENT OF

ROBERT H. LEILICH

My name is Robert H. Leilich. I am president of Corporate Strategies, Inc. (CSI). Under the direction of Vincent J. de Sorbet, who previously submitted a verified statement in ICC proceedings related to the Tongue River Railroad Company (TRRC), I managed and was involved in my company's effort to develop and analyze the operating and financial plan for the proposed Tongue River Railroad Company, as reflected in the Application for Construction and Operation submitted to the Interstate Commerce Commission in Finance Docket 30186 (Sub-No. 2).

The company I founded in 1980 specializes in railroad operations and economic analysis. We have also performed approximately 60 studies related to the formation, operation, management, and analysis of regional and short line railroads in the United States and abroad. We have been instrumental in the start up of approximately 12 short line or regional railroads. Two of our studies, including that for the TRRC, have focused on the design and operation of totally new rail lines. Our clients include the Association of American Railroads, many of the biggest electric utilities in the U.S., several major North American Railroads, the World Bank, Fortune 500 companies, and many regional and short line railroad operators.

I have direct operating experience as a locomotive fireman and, at one time, was a qualified locomotive engineman and train conductor. I have about six years of direct railroad experience, including work in the mechanical department on the former Southern Railway and in the transportation and operating departments on the Santa Fe. The latter includes direct operating, management experience as a trainmaster.

I have an undergraduate degree in Mechanical Engineering, a Masters Degree in Industrial Management, both from Purdue University, plus a Certificate in Transportation culminating a one year graduate program at Yale University as a Strathcona Fellow. I am a certified ICC practitioner.

In their Draft Environmental Impact Report (DEIS) on the TRRC, the Commission's Section of Energy and Environment (SEE) recommended the Four Mile Creek Alternative as a preferred option. It requested comments from the TRRC on this recommendation, including constraints such as safety and operational problems. CSI and Mission Engineering were responsible for developing the TRRC's preferred alignment, which is 10 miles shorter than the SEE alternative. We also analyzed the operational aspects of the Four Mile Creek Alternative pursuant to requirements of the National Environmental Policy Act (NEPA).

My testimony addresses operational, safety, and cost issues related to the Four Mile Creek Alternative compared to the proposed rail line construction alignment proposed by the TRRC.

FOUR MILE CREEK ALTERNATIVE

Exhibit 1 is the profile for the preferred Tongue River Railroad alignment, as proposed by Mission Engineering. Exhibit 2 is a plot of the profile for the proposed railroad including the Four Mile Creek Alternative. Between about MP 109 and about MP 132 heavy to severe grades are imposed by topography encountered on this alignment. Most significant are the severe descending grades which must be traversed by loaded coal trains.

For loaded unit coal trains, descending gradients greater than 1.5 percent increases operating risks, as marginal braking (stopping) capabilities are reduced by the gravitational component of train weight. For gradients in excess of 1.8 percent, risk increases significantly.

The maximum descending gradient on the Four Mile Iternative is about 2.3 percent, exceeding a distance of 3.19 miles. Under these conditions, rigid and extraordinary operating rules and procedures would be necessary to control the speed of heavily loaded trains descending these gradients, as the margin of braking safety approaches zero or turns negative. Engine crews would have to be very carefully trained to avoid losing control of their train descending grades of this magnitude.

In my expert opinion, a heavily loaded coal train cannot safely descend a 2.3 percent grade. Exhibit 3 is a train performance simulation run for a loaded 110 car coal train over the Four Mile Iternative, moving south to north. Each car in the simulation was loaded to gross 263,000 pounds on the rail, or 14,465 tons for the full train, not counting locomotives (195 tons each). Today, cars may be loaded even heavier than that used in the simulation. The large spike in the left side of the graph shows that the simulated train runs away from the 10 MPH speed limit that I imposed on the steep descending 2.3 percent grade. Even with brakes fully applied, maximum speed reached was 62 MPH--clearly unsafe by any measure. While the train may not derail if there are no problems with the train or track and the track is clear, permitting a train to run uncontrolled for such a distance and at those speeds invites disaster if there are problems with the train, track, or the track ahead is not clear. At the base of the Four Mile Creek Alternative the train would cross the river on a bridge at this runaway speed—dangerous and unacceptable.

I undertook this same analysis using another version of CSI's train performance calculator (TPC), where both locomotive dynamic brakes and air brakes can be manually and independently controlled. Both versions of the TPC required seven 3000 horsepower (SD40-2) locomotives to lift the loaded coal train from Springer to the summit. This is four helper units in addition to the three lead power units. In real life, this much helper power would require that the power be placed between the 50th and 60th car in the train to avoid severe draft (pushing) forces which could cause a derailment.

In the manual simulation, it took all seven units, with full dynamic braking on all units, and a very heavy brake application to hold train speed to no more than 10 MPH in descending the grade. Had speed increased by as little as 5 MPH, or had dynamic braking been lost on 2-3 units, the engineer would have lost control of this train. The tragic 1989 experience of a runaway Southern Pacific train on the descending 1.8 percent El Cajon (Cajon Pass) grade is a vivid example of the difficulty experienced in controlling a heavily loaded train on a steep grade. In this case, even emergency braking could not slow the train. On the Four Mile Iternative, grades are even more severe with the likelihood of a run-away train almost an unavoidable certainty without the most extraordinary precautions. No railroad civil engineer would ever choose such a route when far better alternatives are available and so much safer to people and equipment.

Severe grades imposed by the Four Mile Iternative and the added distance totally eliminates the ability of TRRC train crews to make a 12 hour turn (from Miles City to Decker, and return). The alternative route adds considerably to fuel costs, a significant requirement for additional employees, and imposes severe operating and maintenance (braking) requirements on cars and locomotives.

Besides the additional construction cost of $8.5 million estimated by Mission Engineering, the Four Mile Iternative also adds the need for four helper units plus one spare to be purchased by the TRRC. At $1.3 million per unit, TRRC is faced with a total additional capital outlay of $15 million, plus additional operating costs, plus additional financing costs. This avoidable extra cost also adds a severe initial capital cost to the project and continuing, unnecessary higher operating cost.

The Four Mile Iternative adds .6 hours to the running time of the *loaded* train and requires an additional 913 gallons of fuel compared to the operating plan via the preferred route. Increased running time for the *empty* train amounts to .5 hours and increased fuel required is about 281 gallons. Total additional running time is 1.1 hours and requires 1,194 additional gallons of fuel (not counting idling time).

Cutting helpers in and out of the train, plus mandatory air tests would add another 1 to 1.5 hours of time—a total of 2.1 to 2.6 extra hours for the round trip via the Four Mile Iternative. This represents a 22 percent increase in cycle time (13.4 hours versus 11). Additional direct fuel consumption represents an increase of 50 percent compared to the original proposed alignment. Exhaust emissions increase by the same percentage.

From an operating and safety viewpoint alone, there are unacceptable disadvantages to the Four Mile Iternative. This route alternative is an open invitation for an accident, unnecessarily risking human injury or death, significant property damage, and avoidable environmental damage. I cannot support this routing alternative and believe it must be rejected as a viable option to the initial alignment proposed.

INCREMENTAL COSTS

Besides being unacceptable from an operating, safety, and risk viewpoint, the Four Mile Iternative increases direct operating costs. Exhibit 4 summarizes my estimate of the

additional costs associated with this alternative routing. The largest elements of those costs are locomotive operating, maintenance, and capital costs, followed by significant increases in labor operating costs, car costs and, to a lesser extent, track maintenance costs.

Car costs shown reflect additional car mileage charges attributable to the longer route and additional time related to longer round trip time. It also reflects that only one-half of cars are estimated to be time and mileage (BN owned) cars versus private line cars which earn neither time or mileage. Private car owners will bear additional maintenance costs due to the longer route and severe braking—costs I have not included in my analysis.

Sources of data for Exhibit 4 are based on Train Performance Calculator runs performed by myself, information contained in the ICC application, and other sources used in preparation of financials summarized in the ICC application.

As Exhibit 4 shows, direct operating costs are estimated to increase by $3.2 million per year for the Four Mile Iternative over the preferred route. Based on the number of carloads handled, this translates to approximately $22.30 per carload—nearly a 34 percent increase in direct operating costs compared to direct operating costs derived from the financial statements included with TRRC's ICC application.

The applicants proposed alignment was carefully engineered to minimize human risks and additional environmental damage, as well as to achieve maximum operating efficiencies. From an operational, safety, and economic viewpoint there are serious problems with the Four Mile Creek Alternative to the point I cannot support this alignment as a feasible alternative to that originally proposed.

Robert H. Leilich

A-74

VERIFICATION

State of Virginia

County of Fairfax

SS:

Robert H. Leilich, being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted there are true and that the same are true as stated.

Robert H. Leilich

Subscribed and sworn to before me this 19th day of October 19, 1989.

Notary Public of [illegible]

My Commission Expires 10/31/96

5

THE WILDERNESS SOCIETY

October 21, 1992

RECEIVED
OCT

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

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

Dear Ms. White:

Enclosed are comments on the Draft Environmental Impact Statement for the construction and operation of additional rail lines from Ashland to Decker, MT by the Tongue River Railroad Company.

The Wilderness Society has reviewed the comments and finds that the Draft Environmental Statement is inadequate. Based on the information presented in the Draft Environmental Impact Statement, this project should not be approved by the Interstate Commerce Commission because of its failure to adequately consider a no build alternative.

Additional reasons for not approving this project are that the Draft EIS fails to analyze the cumulative impact of the 131 miles of main line and extension of the railroad. It fails to adequately consider the impacts of the project on the Native American population residing int he area. The Draft Environmental Impact Statement does not comply with Section 7 of the Endangered Species Act, and therefore, this project should be rejected.

Please keep The Wilderness Society advised on this pending matter before the Commission.

OFFICE OF THE SECRETARY
OCT 22 1992
PART OF PUBLIC RECORD

Sincerely,

Michael A. Francis
Director, National Forests Program

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900 SEVENTEENTH STREET, N.W., WASHINGTON, D.C. 20006-2596
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OCT 22 1992
PART OF PUBLIC RECORD

COMMENTS OF THE WILDERNESS SOCIETY ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE TONGUE RIVER RAILROAD COMPANY RAIL LINE FROM ASHLAND TO DECKER, MONTANA

FINANCE DOCKET NO. 30186 (SUB NO. 2)

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GENERAL OVERVIEW OF COMMENTS

From a technical standpoint, the EIS is deficient in several instances which are summarized below and detailed in the following discussion of the Draft EIS in a section by section analysis.

- The Draft EIS presents a segmented approach to the overall intent of the Tongue River Railroad Company (TRRC) to provide continuous rail service from Miles City to Decker. TRRC has recently received approval from the ICC for construction and operation of a rail line from Miles City to Decker. In this Draft EIS, TRRC proposes a 42-mile extension that would continue from Ashland to Decker. Instead of two separate projects, the main line and extension (a total of 131 miles) should have been analyzed and reviewed together as one project.
- In order to avoid issues of segmentation, the Draft EIS should address cumulative impacts from construction and operation of both the main line (89 miles) and the extension (42 miles). TRRC has indicated that both lines would be constructed at the same time. Without an adequate discussion of the cumulative impacts associated with the entire 131-mile rail line, the Draft EIS improperly segments TRRC's intended action into two projects.
- A thorough discussion of impacts that would not occur under the No Build scenario must be included to provide an adequate comparison of alternatives. Given the potential for significantly adverse environmental impacts occurring with either build alternatives, serious consideration should be given to the No Build alternative as the environmentally preferred alternative.
- Section 7(a)(2) of the Endangered Species Act states that each Federal agency shall insure that any action authorized, funded or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species. Therefore, in accordance with the Act, the ICC cannot authorize the proposed action until a Biological Assessment is prepared and a no-jeopardy Biological Opinion is issued. The statement in the Draft EIS that "TRRC will prepare the Biological Assessment during final engineering if the proposed extension is approved" does not comply with Section 7 of the Act: Interagency Cooperation, Federal Agency Actions and Consultation.
- The distribution of information within the document is difficult to follow and potentially misleading due to a lack of coherent document organization.

EXECUTIVE SUMMARY

Discussion of TRRC's Preferred Alignment and the Alternatives

- The Draft EIS states that TRRC has indicated that construction and especially operation of the Four Mile Creek Alternative may be more costly but no cost comparisons were included in the Draft EIS. It is hereby requested that this information be included as part of the Final EIS.

Public Participation

- It is noted that the scoping meetings for the project were held in Ashland on December 6 and 7, 1989 and that the final scope of study was developed and published in the Federal Register in March 1990. It is further noted that although the TRRC informed the ICC's Section of Energy and Environment in January 1989 that it intended to file an application for the proposed Extension, the TRRC did not file its application until June 1991. Thus the application was not filed until 18 months after the scoping meetings were held and 15 months after the ICC had determined and published the final scope of study for the EIS. The scoping/public involvement process and a determination of the final scope of study could have been compromised by the timing of these National Environmental Policy Act (NEPA) procedures prior to the submittal of the official application and full identification of the proposed action.
- The Draft EIS makes no reference to a public hearing on the Draft EIS so it is assumed that one is not planned. NEPA procedures provide that agencies shall "hold or sponsor public hearings or public meetings whenever appropriate..." Criteria include whether there is "substantial environmental controversy or substantial interest in holding the hearing." Given the fact that TRRC's proposed action could result in significant adverse impacts to existing land use; social, economic and transportation issues; safety; water quality; aquatic and terrestrial ecology; Native Americans; and cultural resources; and that the last public hearing as a part of the NEPA process for the proposed action was 2½ years prior to the publication of the Draft EIS, a public formal

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hearing on the Draft EIS is appropriate and justified in order to meet the intent of NEPA.

Summary Impact Table

- Table S-1 indicates that social and economic impacts (i.e., construction employment and construction expenditures) for both build alternatives are the same. Since the Four Mile Creek alternative is ten miles longer than the TRRC preferred alignment, construction costs are anticipated to be higher. If the anticipated construction schedule were to remain the same, then construction employment should also increase. An explanation is warranted.

- Only archaeological properties appear to be impacted under "Cultural Resources;" there is no mention of impacts to the landscape and associated religious implications. Table S-1 is misleading because it appears to deal with 8 sites, not just National Register (NR)-eligible or listed sites, although subsequent impact discussion focuses on impacts to NR-eligible or listed properties. It should be noted that only impacts to NR-eligible or listed properties require mitigation under Section 106 of the National Historic Preservation Act.

CHAPTER ONE

Framework for the Draft EIS Preparation

- The Draft EIS serves to supplement the EIS prepared for the TRRC project for the 89-mile rail line from Miles City to Ashland. The current proposed action is for a 42-mile extension from the terminus of the approved rail line near Ashland to Decker. With the exception of addressing surface mining operations to be served by both the main and the extended TRRC rail lines, cumulative impacts from the construction and operation of the 131-mile rail line (main line and extension) are not addressed in the Draft EIS.

  Cumulative impacts are defined, pursuant to NEPA, as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonable foreseeable future actions.... Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time". The Draft EIS fails to address the cumulative effect of altering the character of the landscape and effects on cattle operations in the area, the cumulative loss of wetlands and in providing access for sport fishing and other recreational activities, as well as, the cumulative impacts to water quality, soil erosion, noise, aquatic and terrestrial ecology including endangered species, air quality, cultural resources,

and issues identified as Native American concerns. Without an adequate discussion of the cumulative impacts associated with the construction and operation of the entire 131-mile TRRC rail line, the Draft EIS could be interpreted as segmenting TRRC's proposed action into two projects. It is TRRC's stated intent to provide a continuous rail line from Miles City to Decker.

CHAPTER TWO

Terrestrial Ecology

- This section states that no threatened or endangered plant species have been identified in the Tongue River Valley Region. How was this conclusion drawn? What sources were used to determine the absence or presence of special status plant species? What field investigations were undertaken to establish this conclusion? Does this statement encompass state as well as federally listed species? The presence or absence of listed, candidate and proposed species of plants should also be addressed as part of the Final EIS.

- Much of the project area has not been formally surveyed for wildlife and secondary data sources referenced are dated between 1978 and 1989. As part of the Final EIS, formal wildlife surveys should be conducted and secondary data source information should be updated.

- The Threatened and Endangered Species Section addresses only three federally listed species, namely, bald eagle, peregrine falcon and blackfooted ferret. The Final EIS should address all federal and state species of special status, including listed, candidate and proposed species. Review of 50 CFR Part 17 published in the Federal Register November 21, 1991," Endangered and Threatened Wildlife and Plants: Animal Candidate Review for Listing as Endangered or Threatened Species, Proposed Rule," indicates that a number of species historically native to Montana are of special status or are candidates under consideration for formal listing. Also because the Tongue River is an integral part of the Yellowstone River Drainage, the impact on aquatic species should be addressed in the Final EIS. A listing of candidate and listed species that should be addressed in the Final EIS, includes, but should not be limited to, those presented below.

Species	Status	Species	Status
Spotted Bat	C2	Black Tern	C2
Loggerhead Shrike	C2	Baird's Sparrow	C2
Ferruginous Hawk	C2	Pallid Sturgeon	FE
Mountain Plover	C2	Least Tern	FE
Blue Sucker	C2	Sturgeon Chub	C2
Paddlefish	C2	Swift Fox	Petition to list
White-Faced Ibis	C2		

Notes to previous listing:
C2 = Federal Candidate Category 2 Species
FE = Federally Endangered Species
FT = Federally Threatened Species

The above species are known to have historically inhabited southeast Montana. More information should be included in the Final EIS to determine the presence or absence in the project study area so that environmental impacts can be adequately addressed.

- The Draft EIS fails to identify threatened, endangered and candidate plant species in the project area. The Final EIS should address federal candidate, proposed and listed plant species as well as state species of special status wildlife and plants.

- Cumulative impacts to special status wildlife and plant species should be addressed for the proposed 42-mile extension and the planned 89-mile rail line between Miles City and Ashland.

Aquatic Ecology

- Fisheries data is more than ten years old. The Final EIS should present current site specific data on fisheries incorporating secondary data sources and aquatic sampling efforts. The Final EIS should address invertebrate species occurrence and impacts based on current data sources and field sampling. Over the course of ten years land use changes in the project area watershed, including dam construction, water utilization, development, farming and grazing have the potential to affect water quality and fisheries habitat. The impact analysis of bridge construction over the Tongue River is incomplete without an assessment of existing fisheries and predicted impacts.

Cultural Resources

- The distribution of information within the document is difficult to follow and potentially misleading due to a lack of coherent document organization. Chapter Two contains a description of the affected environment; this discussion focuses almost entirely upon Northern Cheyenne religious practices and their relationship with the natural environment with a few general comments about the presumed character of the archaeological resource base. A more detailed discussion of the known archaeological resources is presented in Chapters Four (Section 4.14) and Five (Section 5.11), although the titles of the chapters suggest that they are dedicated to impacts. Native American religious concerns are not treated as cultural resource issues in Chapters Four and Five, although they formed the substance of the relevant sections of Chapter Two. Native American religion is treated in separate sections in both Chapters Four and Five, with glancing references to cultural resources. Since the Section 106 process is being used as a vehicle for mitigating impacts to religious properties, it would presumably be easier to follow if all concerns that were to be resolved by the various Memoranda of Agreement were treated consistently in the organization of the material.

- The discussion of regulatory issues associated with cultural resource and Native Americans is also somewhat confusing because the document is incoherent and difficult to follow. Three pieces of legislation appear to be relevant in addition to NEPA: (1) National Historic Preservation Act (NHPA); (2) American Indian Religious Freedom Act (AIRFA); and (3) Native American Grave Protection and Repatriation Act (NAGPRA). The last applies to Indian and/or Federally-owned land, however, stipulations concerning Native American human remains would presumably apply if these are identified within the right-of-way. The Memorandum of Agreement or Programmatic Agreement (PA), which concludes mitigation of impacts under Section 106 of NHPA, can be used to handle impacts that arise under the other legislation as well and is being used for this action. However, there appears to be a 1986 MOA, the content of which is described but the document not given, which governs treatment of cultural resources. The Draft EIS further states that a second Programmatic Agreement is in preparation, which presumably supplements the prior document.

  The treatment of the religious implications of alterations to the landscape, particularly plantings, is not addressed explicitly in the discussion of "Aquatic and Terrestrial Ecology Impact Mitigation" (pp. A-15-A-24). There is subsequently a reference to participation by representatives from the Northern Cheyenne in identification of traditionally important plants in the discussion of cultural resources impacts (p. A-25), although it is prefaced by noting that

this activity is outside of the "requirements of the PA [Programmatic Agreement]." If the PA is intended to address all cultural resource concerns, including religious concerns, then this activity should be a stipulation.

- Figure 2-3 illustrates locations (or approximate locations) of six National Register (NR) properties, and one NR-eligible property. This information does not conform to information provided in the Summary Impact Table (Table S-1) or in the discussions of known sites provided later in the text (pp. 4-16 and 5-5). The scale is so large that site location is meaningless. In addition, no location is shown for the cairn associated with Big Crow or the landform (Battle Butte). Archaeological site location is usually not disclosed in order to protect sites from vandalism; however, some explanation for the absence of illustrations should be provided, since this information would assist the reader to understand the implications of key statements (e.g., that Big Crow's cairn is outside of the ROW impact area).

- There is no indication of public involvement procedures as required by 36 CFR part 800: Protection of Historic Properties, Regulations of the Advisory Council on Historic Preservation Governing to the Section 106 Review Process. To quote, "The Council, with the assistance of the Agency Official, shall arrange for public notice and involvement appropriate to the subject matter and the scope of the program. Views from affected units of State and local government, Indian tribes, industries, and organizations will be invited".

CHAPTER THREE

Construction

- Page 3-2 of the Draft EIS states that the construction work force would number 350 in the first year of construction and could number as high as 728 in the second year. No reference is given as to the anticipated work force in the third year of construction. Further, Table 3-2 indicates that direct employment for 1992 (the peak construction year) would be 395. This contradicts the earlier statement.

- Page 3-2 states that 40% of the construction work force would be derived from local communities. Given the relatively low percentage of experienced construction workers in Big Horn, Custer, Powder River and Rosebud counties, how would TRRC ensure that 40% of the construction labor force would employ local residents?

- Table 3-2 of the Draft EIS indicates the Four Mile Creek alternative would entail ten additional miles of rail line. This would result in increased construction costs. This fact is not reflected in the summary of construction impacts, particularly direct and indirect employment figures and construction expenditures. Operational impacts should also be reanalyzed to determine any additional differences for employment figures for the operation and maintenance of the longer rail line and the total net cumulative fiscal balance.

No Action Alternative

- The No Action Alternative is inadequate for comparison purposes. Chapter One indicates that TRRC currently proposes to transport tonnages for the rail line already approved and the proposed extension that are essentially the same as those previously indicated for the approved rail line alone. The Draft EIS further indicates that the largest percentage of tonnage would be transported on the proposed extension. Thus, if the ICC does not approve the rail line extension, impacts associated with the approved rail line would be less than discussed in the 1985 Final EIS for that line. The No Action alternative should address any anticipated reduction of environmental impacts given this scenario.

- Further, since the anticipated TRRC revenues and purpose and need for the entire line is predominantly linked to the construction of the extension, it may not be a reasonable assumption that TRRC would construct the Miles City to Ashland line regardless of whether the extension were built or not.

- The entire Draft EIS presupposes that either the TRRC preferred alternative or the Four Mile Creek alternative will be approved and does not give credence to the No Action Alternative. Given the potential for significantly adverse environment impacts occurring with either of the build alternatives, serious consideration should be given to the No Build alternative as the environmentally preferred alternative. Rationale must be provided to indicate why the No Action alternative is neither feasible nor preferred. A thorough discussion of impacts that would not occur under the No Build scenario must be included to provide an adequate comparison of alternatives.

CHAPTER FOUR

Land Use

- It is unclear whether access to the Tongue River within the Tongue River Reservoir State Recreation Area would be impacted by TRRC's preferred alignment other than severing the access road at both ends. A graphic should

be provided in the Final EIS to depict the location of the rail line in relation to the river within the recreation area. Since TRRC would construct ROW fencing along the entire line, access to the river for sports fishing, hiking and picnicking may be impacted. If so, these impacts must be identified and discussion of mitigation measures must be included in the Final EIS.

- Potential borrow sites should be mapped and presented in the Final EIS with a description of existing natural resources, predicted environmental impacts and appropriate mitigation measures.

Tongue River Dam

- The Draft EIS does not indicate whether the six floodplain (bridge) crossings or other encroachments are in accordance with FEMA guidelines. For instance, the EIS does not state whether a FEMA study was ever conducted for the Tongue River. If one was conducted, the results of the 100-year floodplain and floodway limits should be depicted in the final EIS in order to fully assess project impacts such as backwater effects on adjacent properties as well as channel and wetland impacts.

- It is unclear from the construction and floodplain sections whether the six proposed floodplain crossings are on structure or fill. HEC-1 calculations indicate that the crossings are on fill outside of the proposed 400-500 foot structure limits. Figures 3-2 and 3-3 suggest that large embankments effectively damming the floodplain are proposed.

- Utilizing failures of the proposed bridges as a means justifying TRRC's preferred alternatives' flood attenuating capabilities is neither practical or adequately documented. The cumulative breaching of the proposed bridge structures may increase flood impacts downstream and the debris and fill associated from the structures may impact the floodplain. These impacts should be discussed in the Final EIS. The costs for replacing these structures should also be considered in the economic evaluation of the alternative route.

Hydrology & Water Quality

- Insufficient data are presented in the Draft EIS to verify the validity of the parameters used in developing average annual sediment loads. References or methodology employed should be included in the Final EIS for the following parameters: areas of impact, average slope length, rainfall factor "R", and soil erodibility factor "K". It should be noted that the cropping management factor "C" appears very conservative while the erosion control practice factor P appears low.

- The Draft EIS indicates that the estimated sediment delivery ratio for Montana's Tongue River Basin is 6% and that for this analysis 8% was assumed. No data were provided to indicate how the 6% ratio was determined for the Tongue River Basin.

- The total suspended solid (TSS) loading rates calculated are average annual values and do not provide a valid comparison with random sample concentrations for the purposes of demonstrating impacts. Flow weighted TSS concentrations on an average annual basis for baseline conditions should be developed in order to perform this comparison.

- The DEIS indicates that seismic studies relating to the effects of blasting in the vicinity of the Tongue River Dam will be performed at a later date. These studies be performed during the preparation of the EIS as alternative construction techniques used in lieu of blasting could effect the cost comparisons of the alternative alignments.

- Alternative structure types should be evaluated to minimize channel and wetland impacts in order to demonstrate that there are "no practical alternatives" to the proposed fill impacts.

- Waters of the U.S. including wetlands and intermittent streams should be identified in the Final EIS using the current approved federal methodology for delineating jurisdictional waters of the U.S. According to the Draft EIS, TRRC intends to conduct more detailed wetland studies during final engineering. Wetland studies during final engineering will not allow for an analysis of alternatives designed to avoid, minimize and reduce wetland impacts at a phase of the project when alternatives can be given serious consideration. The wetland studies and alternatives analysis should be conducted during the Final EIS in accordance with Section 404(b)(1) Guidelines.

  It should also be noted that the Army Corps of Engineers (ACOE) is required to review all permit applications for the potential impact on threatened or endangered species pursuant to Section 7 of the Endangered Species Act (ESA). If the district engineer determines that the proposed action may affect an endangered or threatened species, the engineer is required to initiate formal consultation procedures with the USFWS (33 CFR Part 325.2(b)(5). Therefore, the ACOE cannot issue a wetlands fill permit for a proposed activity unless the activity also complies with the requirements of the ESA.

- The Draft EIS states that "for highway construction projects, wetlands mitigation typically takes the form of construction or enlargement of reservoirs, creating a water surface area". This statement is a broad generalization that does not conform to Section 404(b)(1) Guidelines pertaining to wetland mitigation. Mitigation of wetland impacts in the form of compensatory creation of wetlands from uplands should be designed to replace lost wetlands on an in-kind basis. The creation of solely open water habitat to replace impacted wetlands of various types is not a satisfactory alternative. Specific consideration should be given to the creation of riparian habitats to replace those that may be impacted as a result of this project. The Final EIS should identify potential wetland mitigation sites and describe their acreage, vegetative community, hydrologic regime, conceptual design and functional value.

- Table 4-31 identifies a riparian area that "may not meet jurisdictional wetland definitions". Does this area meet jurisdictional definitions for waters of the U.S.? As this is likely to be the case, impacts and Section 404 compliance should be assessed. Table 4-31 also describes several wetlands as being of "low wetland value". How was the functional value of a wetland assessed? Methodology and quantitative results for each wetland area in the project area should be presented in the Final EIS.

- Sedimentation and turbidity impacts to aquatic biota should be described in Section 4.8.1.3.

- The description of existing groundwater resources and project related impacts concludes that "there should be no impacts". This conclusion is unsubstantiated and should be supported with data describing surficial geology, aquifers, recharge areas, discharge areas and groundwater quality in the project area.

- Impacts to water quality and aquatic biota attributable to potential coal spills should be described in detail. This description should address impacts for each waterbody and river segment as well as for individual species of finfish and invertebrates.

Aquatic Ecology

- This section states that "if construction occurs near spawning areas in Hanging Woman Creek, impacts could be minimized by scheduling construction at this location from April to June". As small-mouth bass spawn in late-May and pike spawn in April and May, it would appear that construction during this period would maximize, not minimize, impacts to

spawning finfish. Spawning areas should be identified as part of the Final EIS noting species, breeding season and likely impacts. Construction in spawning areas should be avoided from April 1 to July 1 at a minimum.

- The cumulative impacts of this proposed 42-mile extension and the 89-mile approved rail line between Ashland and Miles City should be described for finfish spawning areas. The impact of total suspended solids should be described for all species in the Tongue River/Yellowstone River Drainage, especially for special status species such as the paddlefish and blue sucker.

Terrestrial Ecology

- Section 7(a)(2) of the Endangered Species Act states that each Federal agency shall insure that any action authorized, funded or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species. Therefore, in accordance with the Act, the ICC cannot approve the proposed project until a Biological Assessment is prepared and a no-jeopardy Biological Opinion is issued. The statement in the Draft EIS that "TRRC will prepare the Biological Assessment during final engineering if the proposed extension is approved" does not comply with Section 7 of the Act: Interagency Cooperation, Federal Agency Actions and Consultation.

- A Biological Assessment pursuant to Section 7 of the Endangered Species Act should be conducted as part of the Final EIS and address endangered species impacts attributable to the 42-mile extension as well the 89-mile rail line between Ashland and Miles City. In this way, impacts will be addressed during the NEPA/EIS process instead of during final engineering when impacts may not be subject to public review and comment and serious consideration of alternative alignments and avoidance measures may not be practicable.

- The Biological Assessment should address cumulative impacts, indirect impacts related to coal mining operations, transport and development and impacts to candidate and proposed species that may become listed during the construction and operational phase of the project. Species surveys should not be limited by the size of the habitat. All prairie dog complexes should be surveyed for black-footed ferrets.

- The Final EIS should assess wildlife impacts and takings in accordance with the provisions of the Montana Nongame and Endangered Species Act.

- The Final EIS should address wildlife migration and use patterns in the study area and means by which impacts to wildlife movements can be minimized.

Should the barrier effect of the proposed project be unavoidable, impacts to wildlife migrations, foraging and breeding should be identified and described and mitigating measures offered. The Final EIS should map all wildlife migration and use areas particularly threatened and endangered species and big game animals.

- The Final EIS should include field studies for special status plants employing standard survey methods, an impact analysis and a description of alternatives to avoid impacts. Field studies should not be delayed until the final phase engineering stage of the project as impacts will not be adequately addressed as part of the NEPA/EIS process and alternative avoidance alignments will not be able to be given serious consideration.

- Wildlife field studies employing standard survey methods should be conducted as part of technical studies that support the Final EIS. These studies should not be postponed until the pre-construction phase of the project as wildlife impacts will not be adequately addressed during the NEPA/EIS process and mitigative avoidance measures will not be given serious consideration at such a late stage in the project.

- The Final EIS should describe and map sensitive waterfowl wintering areas and nesting areas. Seasonal use should be discussed on a species-by-species basis. Impacts should be assessed accordingly and appropriate mitigation measures incorporated to avoid impacts to waterfowl wintering and nesting areas.

Noise

- The Noise section should describe the duration of the noise impacts and at what time(s) of day, days of the week would noise impacts occur from the operation of the ten trains per day.

- The Noise section indicates 13 structures along the preferred alignment and 15 structures, including one church, along the Four Mile Creek alignment that would experience noise levels of 65 DBA. In addition, "two or three" Birney residences were located in proximity to the 70 DBA contour and the "closeness of Birney's church and school to the 65 DBA contour line also require notice because of the significance as sensitive receptors". Due to these potential impacts, noise contours and impact areas should be depicted and mitigation measures should be considered and assessed in the Final EIS.

Cultural Resources

- As previously stated, descriptions of known archaeological resources should be included in the discussion of the affected environment presented in Chapter Two. No justification for the predictive model (such as topography, access to water, etc.) is presented, and the discussion of archaeological resources is weak. No discussion is provided as to how geomorphological developments and/or historic agricultural practices may have affected preservation of prehistoric archaeological resources. It is likely that there are relationships between the incidence of archaeological sites and the existing landscape resulting in concentrations of sites; this discussion implies that sites are uniformly distributed. Identifying possible concentrations of archaeological sites is important because it expands the potential for avoidance through relatively minor alterations within a preferred ROW.

- The predictive model, a standard planning tool, is presumably taken from a more comprehensive discussion of the referenced reconnaissance but no citation to this study is presented. In addition, explanation of the concept of "predictive modeling" and its use would be useful. It is also noted that a "non-Indian" burial within the 3,000-foot corridor has been determined Not Eligible but no discussion of its treatment is provided. Although not protected under legislation previously mentioned, presumably there is other provision requiring attention to human remains.

- The Draft EIS is clearly based on preliminary findings and will be followed by more intensive survey and testing, as needed. Programmatic treatment of large study areas is common. However, the reader is not reminded that the universe of sites discussed in this section does not represent the universe of sites that may exist and that may be identified during future studies.

CHAPTER SIX

Recommended Mitigation

- This section concludes that the Four Mile Creek Alternative is more environmentally advantageous. While this alternative does avoid impacts to sensitive areas along the Tongue River north of the dam, it also adds ten miles of rail line to the project with associated development impacts. The Final EIS should present a detailed comparison of both build alternatives depicting the alignments on topographic and aerial base maps. Each alternative should be assessed based on field analysis and verification of resources including wetlands, endangered species, vegetative communities, soils, geology and wildlife habitat.

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- Given the extent of the significant adverse impacts already identified in the Draft EIS, serious consideration should be given to the No Action alternative as the environmentally preferred alternative.

APPENDIX A - MITIGATION PLAN

Land Use Impact Mitigation

- Chapter Four indicated that severance of two tracts in the Cormorant Estates could reduce the market value of the individual tracts. Mitigation is proposed to provide an alternative means of ensuring access to the properties. Mitigation should also include the option of relocation or acquisition to compensate for the loss of the property's market value.

Hydrology and Water Quality Impact Mitigation

- The Section 404 permit process regulates all waters of the U.S. not just perennial streams.

Aquatic and Terrestrial Ecology Impact Mitigation

- Aquatic sampling efforts performed upon the completion of final engineering will not allow time for public review and comment in the NEPA/EIS process or serious consideration of re-designed alternatives to avoid aquatic resource impacts.
- A Biological Assessment conducted during final engineering would be too late for inclusion in the NEPA/EIS process and will eliminate the opportunity for comments and revisions that may result in consideration of alternative alignments and designs.

Cultural Resource Impact Mitigation

- As previously discussed, mitigation measures appear to separate vegetation (sacred plants) from resources treated under the Programmatic Agreement (PA), now in preparation. However, the existing character of the landscape possesses intangible religious and cultural value which the discussion of the proposed mitigation does not clearly acknowledge. Although this concern is presumably addressed in the PA, it is not clearly explained to the reader. As mentioned, only sacred plants are addressed directly in this section and this is only a glancing reference.

APPENDIX D - LIST OF PREPARERS

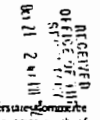
- NEPA guidelines (Sec.1502.17) indicate the EIS "shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement". The Draft EIS references Ethnoscience, a consulting firm, as assisting the ICC in the preparation of the Draft EIS but no mention is made in the List of Preparers as to the individuals involved or their qualifications.

1

Before the
Interstate Commerce Commission

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

Tongue River Railroad Company (TRRC) –
Construction and Operation of an additional Rail line from Ashland to Decker, Montana



Background: The Tongue River Railroad Company (TRRC) has applied to the Interstate Commerce Commission for authority to construct and operate a 42-mile rail line from a point south of Ashland to a connection with operating coal mines near Decker, MT. These comments will address several problems with the economic reasoning and projected job growth in the Social and Economic section of the Draft Environmental Impact Statement. Additionally, the negative economic impact to Rosebud County resulting from TRRC will be examined.

My name is Robert A. Kalt. My business address is Division of Budget and Planning, P.O. Box 809, Jefferson City, MO 65102. I am an economist and Budget and Planning Analyst for the State of Missouri, Office of Administration Division of Budget and Planning. In addition to my work for the State of Missouri, I provide economic consultanting services for individual clients. I received a Bachelor of Science in Business Administration with a emphasis in economics and my Masters of Science in Economic from Southern Illinois University at Edwardsville. My specialization in graduate school was the quantitative forecasting. (Disclaimer - The views, findings and conclusions of this paper are those of the author and are not those of the State of Missouri, or the Missouri Office of Administration.)

TRRC OVERSTATES THE VALUE OF CONSTRUCTION ON COMMUNITIES

TRRC testifies the payroll, of the workers, from Forsyth and the surrounding area will approximate $960,000 during the construction period. Using an income multiplier of 1.8 they indicate an additional $1,730,000 of income would accrue to Forsyth and surrounding areas during construction. TRRC overstates the value of construction wages by ignoring the impact of taxes on individual wages, and by not showing the present value of the construction. It must be noted that ignoring the impact of state and federal taxes will OVERSTATE the true economic impact to the communities. I am not suggesting that TRRC does not plan to spend $960 thousand, rather that consumers cannot spend income they do not receive. For example:

Payroll	$960,000
Social Security taxes (7.65% of wages)	-$73,440
Federal Taxes (15% is the lowest tax bracket)	-$144,000
Montana State Taxes (5.4% effective rate)	-$51,840
After tax income	$690,720

Using TRRC Income Multiplier of 1.8, the true economic benefit to the community will be a maximum of $1.24 million NOT $1.73 million. Since all taxes are taken out before individuals are paid and the taxes are exported from the communities, it is inappropriate to use total payroll to calculate the additional income to the community.

TRRC DATA PRESENTATION IS INCONSISTENT

TRRC consistently talks about the value of the construction and the benefits that will accrue to the communities in current dollars. However when they talk about the loss to communities they use the present value method which discounts the overall loss. TRRC should either present all data in current dollars, or discount all economic data using the present value method, to allow for an accurate comparison across and within communities.

As TRRC correctly states, the present value of the additional income due to construction depends on what assumptions are made concerning discount rates and planning horizons. Using TRRC *Income Multiplier of 1.8* and their *8% discount rate*, the total present value of the income gain would be $1.15 million over the three year construction period.

TRRC UNDERSTATES THE RAILROAD JOBS LOST IN FORSYTH

TRRC states, "In Forsyth, Montana, the BN employees approximately 104 persons; (EIS pg. 4-17). TRRC then concludes that 14.5 jobs would be lost (displaced) due to the construction and operation of the extension. This number appears to be based on their calculation of average crew size, total crew members, train days, and required crew days. This estimate is not consistent with actual rail traffic in the Forsyth area.

During the period August 1 - August 18, rail traffic in Forsyth was broken down as follows:

45%	Run through coal
35%	Forsyth area coal
20%	Merchandise and other through freight

The Roadmaster at Burlington Northern (BN) indicates there are an average 15 trains/day that run through Forsyth, Montana. If the Extension is completed rail traffic in Forsyth Montana is sure to be impacted. All of the through coal traffic in Forsyth will stop as companies move coal along TRRC rail line to take advantage of the shorter route. Publicly TRRC assumes that Wyoming coal marketers will not try to expand into the Northern Corridor, and the Northern Midwest Markets where Montana currently has a cost advantage. This assumption is naive and unrealistic. The completion of TRRC and the rail link between Decker and Mile City will likely result in the loss of 75 - 80% of the Forsyth area coal rail traffic. This would indicate that 75 -77 trains/week would no longer run through Forsyth. The remaining usage of the rail systems would be limited to merchandise, through freight and a small amount of Forsyth area coal. What is not explainable is why BN would only dismiss 10% of their employees in the Forsyth area when they will lose approximately 75% of their rail traffic!

Even if TRRC loss of 14.5 employees is correct, with the loss of 70+% of it's rail traffic, BN is likely to relocate the 33 maintenance persons and release several of the clerks employed at Forsyth. So the direct impact of the TRRC extension is the loss of 50 jobs not 14.5 (scenario 1). The loss of rail traffic from the Forsyth area coal is likely to result in the further reduction of 36 BN employees, bring the total number of Forsyth area jobs lost to 86 (scenario 2).

Cost to Forsyth*

	Railroad Jobs lost	Average Salary[1]	Income Multiplier[1]	Annual loss to Community
TRRC's	14.5	$45,000	1.8	$1.17 million
Scenario 1	50	$45,000	1.8	$4.05 million
Scenario 2	86	$45,000	1.8	$6.97 million

*This analysis ignores the impact of state and county taxes to allow comparison with TRRC's published data.
1 TRRC Environmental Impact Statement pg. 4 - 17

It is important to realize that Forsyth and the surrounding communities will continue to experience this annual loss of income long after the construction phase is complete. These employees are also not covered by severance agreements as indicated in TRRC Environmental Impact Statement.

TRRC ENVIRONMENTAL IMPACT STATEMENT IS INCOMPLETE
1. TRRC OPENS THE NORTHERN MIDWEST MARKETS TO WYOMING COAL

The market for Montana coal is largely restricted to areas where it has a travel cost advantage over Wyoming Coal. This is because Wyoming coal has less over burden and thicker deposits than Montana Coal making it cheaper to mine. Wyoming coal keeps Montana coal shut out of markets where Wyoming has travel distance parity or a travel advantage. Verified statements of Victor H. Wood, submitted on behalf of TRRC indicate: *The primary purpose of the proposed TRRC extension is not to create a duplicate through line between Decker and Mile City, but to reduce the rail mileage from all existing Powder River Basin (PRB) coal sources to the upper midwest.* (Wood pg. 13) *The extension will shorten rail miles to upper midwest markets by 130-160 miles* (Wood pg. 22). However TRRC fails to address the impact of the reduced travel distance for Wyoming coal which comprises the majority of the Powder River Basin.

TRRC ignores this loss of market share stating, *All this coal is categorized as non-compliance coal meaning, the coal does not meet the ambient air standards as set by the 1990 Clean Air Act Amendment* (Gustafson pg. 10). However Peabody coal has shown that markets do exist for this coal as demonstrated by their new five year contract with Minnesota Power and Light.

TRRC indicates, *Wyoming coal will not have an advantage over Decker and Spring Creek on either mileage, BTU's or sulfur content* (Gustafson pg. 12). Notice, Mr. Gustafson DOES NOT state that Montana coal (including Decker and Spring Creek) will have a cost advantage over Wyoming coal. Without the travel advantage the output of the Colstrip/Sarpy Creek mines will be drastically reduced. Having demonstrated existing markets for this coal TRRC, should not be able to ignore the impact of the proposed extension on existing mining operations.

TRRC ENVIRONMENTAL IMPACT STATEMENT IS INCOMPLETE
2. TRRC DOES NOT ADDRESS INTRA-REGIONAL ECONOMIC IMPACTS

Following the passage of the National Environmental Policy Act (NEPA) in 1969, two orders established that all Federal agencies must assess the environmental impacts of their major programs and actions as well as provide leadership in environmental protection (Exec. Order 11514, 11752). Because of NEPA's requirement for assessing any impacts on the "quality of the human environment," subsequent questions arose whether this mandate extends to the social and economic impacts of programs and actions. Many courts have decided that in preparing Environmental Impact Statements (EIS), adequate assessment of social and economic impacts is as important as assessment of biophysical impacts.

By ignoring the impact of Wyoming coal on Montana's markets TRRC application is incomplete. TRRC analysis should consider reasonable scenarios in which significant quantities of Wyoming coal replace Montana coal in the Northern Midwest Market. Another fact to be considered with the proposed TRRC extension is the economic viability of MONTCO mine. MONTCO coal may have a higher BTU, a lower sulfur content, and a shorter travel distance than Wyoming coal, but this does not mean the coal is cheaper to mine. Coal mining is a capital intensive operation, the expansion of the Wyoming mines with it's cheaper labor is more likely, than the development of new mines. The operation of MONTCO mine should not be assumed operational except for the most optimistic of forecast.

Sources:

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, July 17, 1992

Verified Rebuttal Statements of Tongue River Railroad Management and Consultant Witnesses in Response to Verified Statements in Opposition by the Northern Plains Resource Council, United Transportation Union and Others, July 29, 1992 (statements by Gustafson, Woods)

National Environmental Policy Act of 1970, 83 Stat 852, 42USCS4321, et seq. (January, 1970)

Protection and Enhancement of Environmental Quality, Exec Order 11514, 35 F.R.(March 5, 1970); Prevention, Control and Abatement of Environmental Pollution at Federal Facilities, Exec. Order 11752, 38 F.R. 34793 (December 19, 1973).

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS OMAHA DISTRICT
215 NORTH 17TH STREET
OMAHA, NEBRASKA 68102-4978

September 29, 1992

REPLY TO ATTENTION OF

Planning Division

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

Dear Mr. White:

Thank you for the opportunity to review the Draft Environmental Impact Statement (DEIS) for Tongue River Railroad Company - Construction and Operation of an Additional Rail Line From Ashland to Decker, Montana, Finance Docket Number 30186 (Sub-No. 2).

The memorandum of agreement (MOA) between the EPA and the U.S. Army Corps of Engineers on mitigation and the Section 404(b)(1) Guidelines requires that the Corps select the practicable alternative which causes the least damage to the aquatic ecosystem. Considering the MOA between the EPA and the Corps, it would be difficult to justify a decision to issue a permit for the Tongue River Railroad Company's preferred route, if the Four Mile Alternative is determined to be a practical alternative. While not impossible, it is unlikely that an alternative which will impact four additional wetland locations, requires fifty five additional intermittent stream crossings, and results in four additional river crossings, would have fewer adverse environmental impacts.

Appendix A, page A-14 of the document, paragraph A.8.i(1) should be rewritten. The use of the phrase "on designated streams (perennial)" in the first sentence could be misleading. The Corps of Engineers Section 404 jurisdiction extends to all waters of the United States, not just certain designated streams which are considered perennial. We would suggest the Final Environmental Impact Statement reflect the following:

> U.S. Army Corps of Engineers permits for all activities which involve the discharge of dredged, and/or fill material into a water of the United States. The Section 404 permit process requires detailed environmental data as well as construction data. When issued, Section 404 permits contain stipulations and conditions which limit environmental impacts to the greatest degree possible and require compensatory mitigation for unavoidable impacts.

Because Section 404 permits will be required for the proposed project if it proceeds, a Section 404(b)(1) evaluation will need to be performed and attached to the Final EIS as an appendix. A standard format for a 404(b)(1) evaluation has been enclosed for your reference. Also, the field regulatory office of the Corps of Engineers in Helena, Montana should be coordinated with in order to conform with Section 404 requirements. This office may be contacted through:

Mr. Robert McInerney
U.S. Army Corps of Engineers
c/o DNRC/CDD
1520 East 6th Avenue
Helena, Montana 59620-2301

This DEIS would be much clearer if the format used in the Environmental Impacts section coincided with that of the Affected Environment section. In other words, resource and topic headings should be the same in both sections.

In the Affected Environment section, wetlands are addressed under the resource heading, terrestrial resources, without a seperate topic heading, and in the Environmental Impacts section, they are addressed under the resource heading, hydrology, and under the topic heading, water quality. Because wetlands are a special resource concern in their own right, it would be pertinent for them to be addressed under their own topic heading and under the same resource heading in both the Affected Environment and Environmental Impacts sections.

Thank you for the opportunity to review this document. If you have any questions please contact Ms. Julie Svoboda of our staff at (402) 221-4895.

Sincerely,

Richard D. Gorton
Chief, Environmental
Analysis Branch
Planning Division

Enclosure

Copy Furnished:

Mr. Thomas Ebzery
Village Center I, Suite 165
1500 Poly Drive
Billings, Montana 59102

DRAFT 404(b)(1) EVALUATION
PROJECT NAME
DATE

INTRODUCTION

The 404(b)(1) Guidelines, found at Title 40 of the Code of Federal Regulations, Part 230, are the substantive criteria used in evaluating discharges of dredged or fill material in waters of the United States under section 404 of the Clean Water Act and are applicable to all 404 permit decisions. Fundamental to these Guidelines is the precept that dredged or fill material should not be discharged into the aquatic ecosystem unless it can be demonstrated that such discharges would not have unacceptable adverse impacts either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern.

Subpart B of the Guidelines establishes four conditions which must be satisfied to make a finding that a proposed discharge complies with the Guidelines. Paragraph 230.10 provides that:

a) Except as provided under Section 404(b)(2), no discharge of dredged material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences;

b) No discharge of dredged or fill material shall be permitted if it violates state water quality standards, Section 307 of the Clean Water Act, or the Endangered Species Act of 1973;

c) No discharge shall be permitted if it causes significant environmental impacts; and

d) Except as provided under Section 404(b)(2), no discharge shall be permitted unless appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem.

Mitigation to offset significant and insignificant adverse impacts may be developed which could result in bringing a project into compliance with the Guidelines.

Section 230.11 sets forth the factual determinations which are to be considered in determining whether a discharge satisfies the four conditions of compliance. These determinations are as follows:

a) Physical Substrate Determinations;

b) Water Circulation, Fluctuation, and Salinity Determinations;

c) Suspended Particulate/Turbidity Determinations;

d) Contaminant Determinations;

e) Aquatic Ecosystem and Organism Determination;

f) Proposed Disposal Site Determinations (mixing zones);

g) Determination of Cumulative Effects on the Aquatic Ecosystem;

h) Determination of Secondary Effects on the Aquatic Ecosystem.

Subparts C through F evaluate the potential impacts of the fill activity on physical and chemical characteristics of the aquatic ecosystem, biological characteristics of the aquatic ecosystem, special aquatic sites, and human use characteristics. Subpart G sets forth evaluation and testing procedures to provide information necessary to reach the determinations in Subpart B. Subpart H lists actions to minimize adverse effects of the discharge.

FACTUAL DETERMINATIONS

Under each category consider actions for minimizing the effects.

a) Physical Substrate Determinations:
Consider substrate of the existing ecosystem and of the fill material. Include particle size, shape, and degree of compaction. Consider substrate elevation and bottom contours, erosion, and duration of the changes incurred.

b) Water Circulation, Fluctuation, and Salinity Determinations:
Consider change in water current patterns, circulation, and fluctuation. Will the flow be diverted or obstructed? For what period of time?

c) Suspended Particulate/Turbidity Determinations:
Consider kind and concentration of suspended particulates/turbidity in the vicinity of the disposal site. Consider size of the particles and plume. What will be the duration of the effects? Will water quality standards be violated? For what period of time.

d) Contaminant Determinations:
Will contaminants be introduced, relocated, or increased by the project?

e) Aquatic Ecosystem and Organism Determinations:
What effects will the discharge have on the ecosystem (based on the information given in the preceding categories)?

f) Proposed Disposal Site Determinations:
The proposed disposal site must be the smallest possible zone. Consider:
1. depth of the water,
2. velocity, direction and variability of the flow,
3. turbulence,
4. stratification due to obstruction, salinity, or density profiles
5. rate of discharge,
6. concentration of discharge,
7. characteristics of the discharged material, and
8. number of discharges per unit time.

g) Cumulative Effects Determination:
Consider the collective effect this project along with others that are occurring or will occur, and will effect the same area(s).

h) Secondary Effects Determination:
Consider the indirect effects of this project.

COMPLIANCE WITH THE GUIDELINES

a) Practicable Alternatives Which are Less Damaging:

b) Special Aquatic Sites:
Special aquatic sites include:
1. sanctuaries and refuges,
2. wetlands,
3. mud flats,
4. vegetative shallows,
5. coral reefs, and
6. riffle and pool complexes.

c) State Water Quality Standard Violations:

d) Toxic Effluent Standard Violations:

e) Endangered/Threatened Species Effects:
Any adverse effects addressed in the biological assessments should be considered here.

f) Significant Adverse Effects on Human Health:

g) Significant Adverse Effects on Aquatic Ecosystems:

h) Significant Adverse Effects on Recreational, Aesthetic, and Economic Values:
Consider municipal and private water supplies, recreational and commercial fisheries, etc.

i) Steps Taken to Minimize Adverse Effects:

FINDS OF COMPLIANCE

(13)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII, MONTANA OFFICE
FEDERAL BUILDING, 301 S. PARK, DRAWER 10096
HELENA, MONTANA 59626-0096

Ref: 8MO

September 16, 1992

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

Re: Tongue River Railroad Company-Construction and Operation of an Additional Rail Line from Ashland to Decker, Montana, Finance Docket No. 30186(Sub-No.2) Draft Environmental Impact Statement

Dear Ms. White:

In accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, the Environmental Protection Agency's Region VIII Montana Office (EPA) has reviewed the above-referenced Draft Environmental Impact Statement (DEIS).

An application has been filed with the Interstate Commerce Commission (ICC) by the Tongue River Railroad Company (TRRC) to construct and operate a 41 mile rail line from Ashland to Decker, Montana. This will be an extension to the already-approved 89-mile rail line from Miles City to Ashland which has yet to be built. A no action alternative, Four Mile Creek Alternative, and the TRRC preferred alternative have been proposed.

The ICC has supported the Four Mile Creek Alternative as the environmentally most advantageous. The EPA agrees that this would be the least impactive upon the environment. This alternative provides the following:

- no impact on aquatic invertebrates (at the Tongue River dam bridge site)
- fewer wetlands impacts
- fewer riparian area impacts
- much smaller number of stream and river crossings to impact water quality and aquatic life
- no possible impact to Tongue River Reservoir from toxic, materials, or fuel spills
- fewer cultural resource impacts

Although there were very few alternatives developed, the EPA realizes the constraints involved within this project proposal.

The EPA was pleased with the wetlands and sediment impact analysis for both the plan and alternatives. The "no net loss" wetlands mitigation statement (Chaptar 4, page 67) will equal wetlands replacement. The aquatics section (Appendix A, pages 16 & 17) on the use of benthic macroinvertebrates for sampling requirements was excellent.

The EPA would recommend a more innovative means of stream or riverbank protection than standard rock riprap. The placement of logs, root wads, and vegetative plantings should be interwined with the rock placement along watercourses and bridge sites where encroachment occurs. The logs, root wads, and vegetative plantings provide a more natural appearance to the bank stabilization, and provide additional habitat value (shading and cover). The enclosed diagrams provide an example of this type of stabilization.

The EPA agrees with Appendix A, page 1, that Land Use is of "primary importance". We believe that it is important to consider the loss of productive farmland and those vegetated lands which contribute to a stable worldwide environment.

The EPA was concerned with the lack of cumulative impacts discussion. Are there other activities/projects proposed near or adjacent to these railroad developement alternatives? If so, what cumulative impacts might be expected?

Our Native American coordinator does have the following concerns with statements and concepts from Chapter 4:

1) On "guaranteed employment" (page 103), case law has favored Indian Tribal Employment Rights Ordinances (TERO) as a mechanism to favor these rights, especially on projects impacting reservation lands. This "guaranteed employment" would be enforceable under Cheyenne law. This is a total misunderstanding of the trends on or near Indian reservations.

2) We find the footnote number 19 on page 103 as totally inaccurate. Wardship was a term associated at one time about the federal trust responsibility. It is neither accepted by Tribes nor the Federal Government. The contemporary policy is on tribal self determination and a government to government relationship between the United States and American Indian Tribes. The ICC

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does have fiduciary responsibility under current federal policy. The footnote is misleading and conveys the message that the ICC is not responsible to Indian Tribes.

3) What research data/findings are available which support any non-Native American migration to the Northern Cheyenne Reservation (page 105)? Our experience with Indian/non-Indian settlement patterns indicates that non-Indians will group together. Generally, non-Indians have the money to commute.

4) Page 106 does not provide any mention of the Tribes programs or TERO. This will have important bearing on tribal employment over non-Indians.

5) The EPA believes that the ICC does not have the authority to resolve title claims (page 113)!

The EPA requests that the ICC further expound on the information provided in Appendix D. The educational background and experience of this documents preparers should be stated.

This was a well constructed NEPA document. The EPA has no objection to the Four Mile Creek Alternative. The EPA would have serious concerns with potential impacts from TRRC's preferred alignment.

In accordance with the criteria that EPA has established for rating Draft Environmental Impact Statements, we have rated this DEIS as category LO (Lack of Objections). This rating is based in part on the implementation of the Four Mile Creek preferred alternative. A copy of EPA's rating criteria is attached.

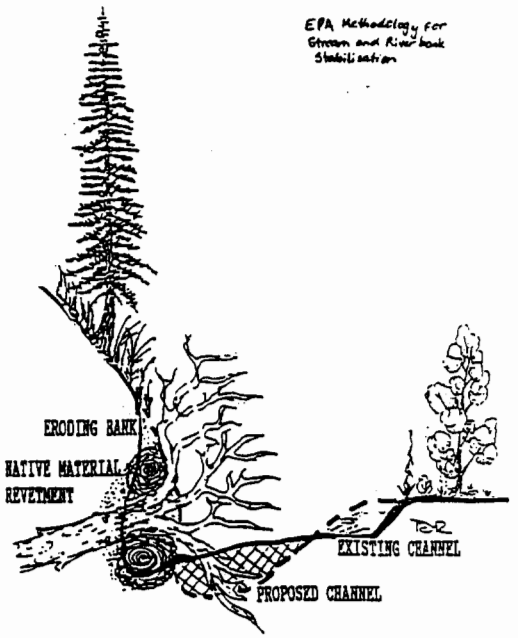
If you have any questions or need further EPA assistance, please contact Jeff Bryan of my staff at 406-449-5486.

Sincerely,

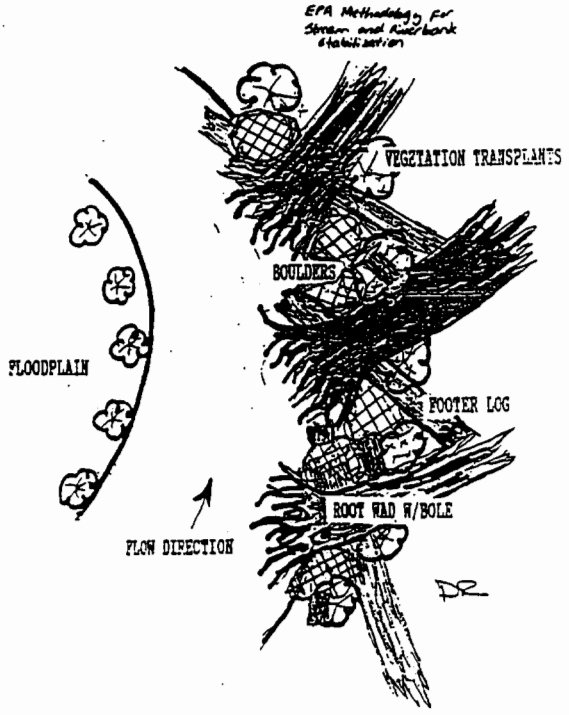
John F. Wardell, Director
Montana Office

Attachments

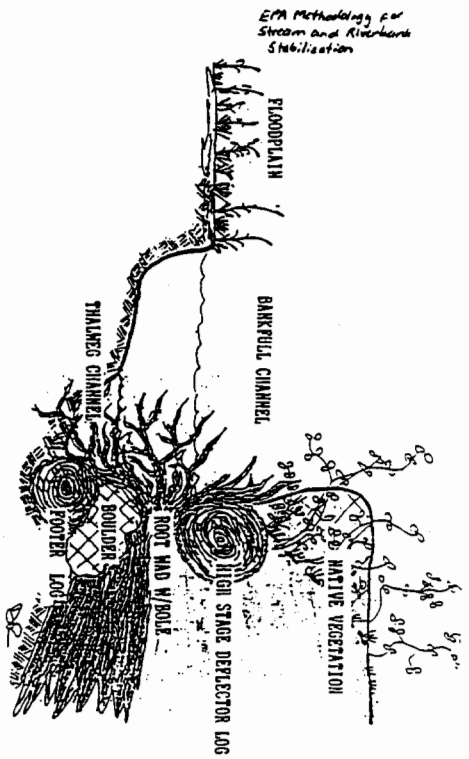
cc: Phyllis Williams, 8WM-EA
Pearl Young, OFA-A104
Thomas Ebsery, TRRC



DESIGN SPECIFICATION #2
SLOPE STABILIZATION/BANK EROSION CONTROL/FISH HABITAT



DESIGN SPECIFICATION #3
PLANVIEW OF NATIVE MATERIAL REVETMENT



DESIGN SPECIFICATION #4
NATIVE MATERIAL REVETMENT FOR BANK STABILIZATION AND FISH HABITAT ENHANCEMENT

SUMMARY PARAGRAPH FORM

ERP NUMBER _____

RATING ASSIGNED TO PROJECT LO

NAME OF EPA OFFICIAL RESPONSIBLE FOR REVIEW OF PROJECT (Principal Reviewer) Jeff Bryan

SUMMARY OF COMMENT LETTER

The EPA has no objection to the ICC's preferred Four Mile Creek Alternative. The EPA did provide comments on cultural statements concerning Native American issues. This was generally a good draft NEPA document.

PARAGRAPH APPROVED FOR PUBLICATION _____ (Initials of OFA Approving Official)

NOTE: Transmit 2 copies to MIU

SMD File: 9147

SUMMARY OF RATING DEFINITIONS

ENVIRONMENTAL IMPACT OF THE ACTION

LO—LACK OF OBJECTIONS

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC—ENVIRONMENTAL CONCERN

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO—ENVIRONMENTAL OBJECTIONS

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

ER—ENVIRONMENTALLY UNSATISFACTORY

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

ADEQUACY OF THE IMPACT STATEMENT

CATEGORY 1—ADEQUATE

EPA believes the draft EIS adequately sets forth the environmental impacts of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

CATEGORY 2—INSUFFICIENT INFORMATION

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

CATEGORY 3—INADEQUATE

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information,data, analyses, or discussions are of such magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From: EPA Manual 1640, "Policy and Procedures for the Review of Federal Actions Impacting the Environment."

BEFORE THE

INTERSTATE COMMERCE COMMISSION

COMMENTS OF THE
MONTANA STATE LEGISLATIVE BOARD
BROTHERHOOD OF LOCOMOTIVE ENGINEERS

ON THE 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

Submitted by:
Montana State Legislative Board
Brotherhood of Locomotive Engineers
David R. Ditzel, Chairman
P. O. Box 642
Livingston, MT 59047
Phone (406) 222-8739

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1. POTENTIAL FOR TRACK SIDE FIRES EXISTS AND EMERGENCY RESPONSE OPTIONS ARE LIMITED.

The right of way corridor is such that after completion it will be as narrow as 75 feet, the access to the track will be limited at best. At page 3-3, in paragraph 4, it is conceded that most of the access roads used during construction will be reclaimed. The rail line will thus pass through large areas of limited access by emergency vehicles in the event of a derailment, or track side fire, or in the event of a fire on a locomotive.

The draft EIS does not adequately consider, nor had TRR properly provided for means of emergency fire vehicle access to combat fires.

Moreover, the entire matter of train caused track side fires has not been properly addressed. The TRR plan indicates that the southbound trip (i.e, Miles City to Decker) would essentially be all upgrade. In that circumstance, the locomotives will be running at full or near full throttle. Under these conditions, carbon sparks in the exhaust gas can easily start fires.

With respect to the reverse movement (i.e., the trip from Decker, MT to Miles City, MT), trains will be moving essentially down grade for the entire trip. Under these circumstances, the locomotives will be utilizing the dynamic brake feature on the locomotive for train braking and speed control.

While the engines are not producing a great a spark

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hazard under these conditions, an even greater spark causing situation can develop however. It arises from a situation found under normal conditions wherein one or more of the locomotives in the train consist will have inoperative dynamic brakes, for all or part of the trip.

Under this circumstance it will be necessary (in consideration of the gross trailing tonnage of the train and of the rail grades on the line) to from time-to-time use the train brakes as the dynamic brakes will not in total be enough to control the train (especially when making a stop for the sidings). Under these various circumstances, the application and use of the train brakes (i.e, the brakes on each car in the train), will lead to the production of sparks, which can and do cause track side fires.

The maintenance status of rail cars and locomotives traveling over the TRR line will not be within the direct control of the TRR. Moreover, they will be operating foreign cars and locomotives. The operating staths (meaning, for example, a defective dynamic brake on a locomotive, or a car with a missing brake shoe) are circumstances beyond the control of TRR). These will only lead to a greater fire hazard that considered either by the draft EIS or in planning by TRR for operational contingencies to handle these fires.

Even in a train in which all locomotives have operational dynamic brakes, it will still be necessary from time-to-time during a trip to apply the train brakes for control of speed or for coming to a stop. In those cases, there exists

additional opportunity for fires to be started.

Thus, these variables will have cause an increased likelihood of track side fires. Fires in a area which is poorly prepared to combat such fires, and for which there will be limited means of access for these emergency forces in responding to the scene of such a fire on railroad right of way.

By way of illustration of this entire point, on the BN rail line from Livingston, MT to Bozeman, MT over the mountain grade territory, numerous fires are started this way by the locomotives which are similarly operating at full throttle due to grade conditions. The use of train brakes on trains for which the locomotive engine brakes are not wholly capable of controlling train speed similarly causes fires. Additional sources of fires are found on rail cars in trains on which one or more brake shoes maybe missing, these cars generate many more sparks and hot metal stuff causing fires.

Of equal importance, BN has in placed a wide, well graveled access road the entire length of this section of track, which is used by emergency fire vehicles to respond to track side fires. Such will not be the case on the TRR rail line.

2. FAILURE TO DEMONSTRATE ADEQUACY OF TWO-WAY RADIO COVERAGE OVER THE ENTIRE TRR RAIL LINE.

There is a distinct absence of any engineering studies that can demonstrate adequate radio coverage at all points on the

TRR rail line from start to finish across the entire territory.

The absence of such communications ability creates the following very real hazards:

1) Inability of the train crew to report the following:
   a) track side fires,
   b) a derailment,
   c) a collision at a crossing, and,
   d) any other emergencies that require prompt response.

2) The TRR indicates it will operate trains via track warrant control (TWC). Dispatching of trains by TWC requires clear, and reliable two-way radio communications to enable dispatchers to deliver track warrant and track warrant changes to train crews out on line.

To illustrate the point, consider the recent head-on collision of two trains north of Great Falls, Montana on the BN system (which operates under TWC) was caused by poor radio communications in an area of bad reception when the crew was being given a TWC order over the radio.

Any "dead spots" for radio reception anywhere on the TRR line will only set the stage for an accident at some future date.

3. CONSIDERATION AND PROJECTION OF TRAIN DERAILMENTS IS GREATLY INADEQUATE.

The consideration of both the number and costs of train

derailments is not realistic.

With respect to cost, the draft EIS allows for $250,000 for a derailment involving 10 to 20 cars. A figure of $500,000 to $1 million is more accurate. The average coal car today costs about $35,000 multiplied by the loss of 20 cars equals a value loss of $700,000 and this does not contemplate labor and materials cost to reconstruct the line segment destroyed by the derailment. The draft simplistically predicts derailments which are not in accord with real-world daily train operations.

A matter of additional real-life concern is the fact that the TRR intends to operate the rail line without the benefit of a continuous automatic block signal system.

A very real consequence of this fact is that with such a block system in place, it is capable of giving away the presence of broken rail. The signal system does this when the rail breaks and the track circuit is opened, this causes the signals in the area go to red or 'stop'. Under these circumstances, train crews are obliged under operating rules proceed not at track speed (i.e, 49 mph), but moreover, at a speed slow enough (not to exceed 20 mph) to allow them to stop safely and being on the lookout for broken rail.

Rail road track breaks often under usage, and particularly under the wide temperature changes found in Montana. Moreover, the fact that the rail will be new is no saving feature, to the contrary, the first year or two of operation especially moving from the warm to the cold season will produce many breaks as weak weld in the continuous welded rail show up.

A-85

The upshot of this is that broken rail on the TRR will not be discovered until a train comes upon it at 49 mph and derails. The draft EIS has not considered the impact of the decision not to signal the rail line with a continuous block signal system.

If the resulting derailment in this scenario involved the head-end of the train (i.e, the locomotives) which it most likely would as the locomotives would be the first to encounter broken rail, then the cost of the derailment will escalate into the multi-millions of dollars. Rail diesel-electric locomotives cost upwards of $1.5 million each.

Similarly, such a derailment involving locomotive units almost always causes the diesel fuel in the locomotive fuel tanks to ignite, again giving rise to a track side fire problem, and the attendant problem of limited access for emergency response vehicles.

4. INADEQUATE CONSIDERATION AND CALCULATION OF GRADE-CROSSING ACCIDENTS.

The line will be running through a rural area where large vehicles (such as tractors, cattle hauling semi-trucks, fuel trucks moving to ranches, etc.) will be crossing. Collision between a train and a vehicle of this size could easily lead to a derailment of the train.

Moreover, citizens will not be accustomed to approaching

and passing over tracks as they will never have been previously in existence in the area. Additionally, no projections are present in the draft EIS or TRR plans for crossing upgrading to automatic signal crossing protection.

All of this will combine to increase grade-crossing accidents, in number, severity, and ultimate cost. None of which is adequately addressed in the draft EIS.

5. NO PROVISIONS HAVE BEEN IN PLANNING FOR INSTALLATION OF ADVANCED TRAIN SAFETY DETECTION SYSTEMS.

TRR has not considered installation of the following track side devices:

a) Hotbox detectors

b) Dragging equipment detectors

c) Broken wheel detectors.

Failure to detect any of these situations in a moving train will almost without fail lead to a derailment, again upwardly impacting, and invalidating the derailment projections found in the draft EIS.

The use of the above named devices is common on railroads today, with the placement of such devices at intervals of about 20 to 25 miles along the track side.

-- END --

F.D. 30186 (SUB NO. 2)

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

FINAL ENVIRONMENTAL IMPACT STATEMENT

APPENDIX B

COMMENTS ON THE SUPPLEMENT TO THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

Jean Alderson
3304 Valley Haven
NW Albuquerque,NM
87107

Dana White
Room 3214
Section of Environmental Analysis
Interstate Commerce Commission
Washington, DC 20423

April 23, 1994

To whom it may concern:

I am writing in reference to Finance Docket 20423(sub no. 2).I am writing to ask the panel to recommend the "no action" or "no build alternative" when considering the purposed construction and operation of the 41 mile rail line between Ashland and Decker Montana.

In the supplemental EIS this option is referred to as "environmentally neutral" by the SEA. The "no build option" is the only option that would allow the region remain intact. This alternative is not neutral. The "no-build" or "no action alternative" is clearly a positive alternative. The "no build" alternative is the only environmentally, socially, and culturally viable alternative. I strongly urge the panel to recommend the "no build" or "no action" alternative.

Sincerely, Jean Alderson

Jean Alderson

Mary Alderson
Box 487
Birney, Mt. 59012

April 23, 1994.

RECEIVED
MAY 16 1994

To: Dana White
Section of Environmental Analysis
Room 3214
Interstate Commerce Commission
Washington, D.C. 20423.

Re: Finance Docket 30186 (Sub No.2)

I am writing strongly in favor of the No Action, No Build alternative to the proposed construction and operation of the Tongue River Railroad Company. None of the potential environmental impacts associated with the proposed Extension from Ashland to Decker should occur.

Sincerely,

Mary Alderson

OFFICE OF THE SECRETARY
MAY 16 1994
Part of Public Record

DAVID BLISS
OTTER, MONTANA

2/D

RECEIVED
MAY 13 1994

To: Dana White
Section of Environmental Analysis
Room 3214
Interstate Commerce Commission
Washington D.C 20423

Re: Finance Docket 30186 (Sub #2)

Dear Ms. White,

The No build alternative is the only Sane Course To Take on The Tongue River Railroad.

The adverse effects on a narrow fragile River Valley CAN-not be Appropriately mitigated.

We must not Continue To destroy LAND That CAN produce a renewable Resource.

Sincerely,
David Bliss

April 20, 1994

Dana White
Section of Environmental Analysis
Room 3214
Interstate Commerce Commission
Washington, DC 20423

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

Dear Ms. White:

I am writing in regards to the proposed Tongue River Railroad. The last environmental impact study suggests a "no build" alternative. After reviewing the environmental impact study, I support the "no build" alternative. It seems this would be the only way of guaranteeing the safety of the wildlife, the habitat, the forestation, the recreation area, air quality, scenic areas, personal property, jobs, and the Tongue River itself.

I am also a property owner and the owner of the home that this railroad will destroy in Cormorant Estates. As this home is to be my place of permanent residence upon retirement, the destruction of this area is of great concern. I have never been contacted by the owners of the Tongue River Railroad regarding their project, nor have these people received permission to be on my property for surveying, planning, or any other purpose. It would appear that my rights as a property owner are being ignored by the TRRC.

The raising of the Tongue River Dam by four feet may also present a problem to this project. The flood levels will change, the county road will change, and land will be lost to this project as well.

With all the studies and comments taken into consideration, it appears the only solution that best meets the needs of the residents of Montana is the "no build" alternative. My question to you is - "Will the needs and wishes of the residents of Montana be heard over the wishes of Big Business?" There would be no environmental impact, personal property would not be lost, jobs would not be lost, the Tongue River Recreation area would not be lost, and business would not be affected. The TRRC can still develop business with the opening of mines along the currently approved section of railroad from Miles City to Ashland.

Again, I support the "no build" alternative. I hope you will give serious consideration to my comments. Thank you for the opportunity to voice my concerns.

Sincerely,

Maurice E Bousquet Lillian M Bousquet

Maurice E Bousquet and Lillian M Bousquet
2222 Rehberg Lane
Billings, MT 59102

cc: Mr. Thomas Ebzery

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(50)

RECEIVED MAY 19 1994 MAIL MANAGEMENT ICC

5/8/94

Dana White
Section of Environmental Analysis
Room 3214
Interstate Commerce Commission
Washington, DC 20423

ENTERED Office of the Secretary MAY 17 1994 [1] Part of Public Record

Dear Ms White,

Regarding Finance Docket 30186 (Sub No. 2)

The "no action" alternative is the only feasible alternative in this matter. Environmental reasons have become economic answers for the TRRC. Remember page 2-7 DEIS paragraph one. 28 miles from Birney to Decker have not been formally surveyed for wildlife. This is over one half the proposed extension, we are trying to settle the environmental question on. Studies have not been done. (Wildlife, Soils, Vegetation, Hydrology, Air, People) This to me is the environment.

The no action alternative is the only feasible solution to this proposed railroad.

Sincerely
William P Carroll
William P Carroll
FL Ranch
Birney, MT 59012

FL Ranch
Located in Section 23
T7S, R41E, Rosebud County

APR 19 1994

[1] Part of Public Record

Dana White
Section of Environmental Analysis
Room 3214
Interstate Commerce Commission
Washington, DC 20423

In Reference to Finance Docket No. 30186(Sub No. 2)

Dear Ms. White,

Concerning Finance Docket No. 30186(Sub No. 2), I'm very concerned about TRRC's current proposed route versus the Four Mile Creek Alternative. I have studied this document thoroughly and have come to the conclusion that the "no build" alternative would be the best because it is environmentally neutral since construction and operation of the proposed Extension and related environmental impacts would not occur. (1)

As a property owner in Cormorant Estates, I'm very concerned about the potential impact this Tongue River Railroad will have on this area, Tongue River Valley, and Tongue River Reservoir State Recreation Area. First of all, I think that the environmental impact on these areas will be great; (1)noise from trains affecting property owners, recreation users, wildlife, etc; (2) deforestation of ponderosa pine/juniper habitat affecting wildlife and scenic values; (3)increased air pollution; and (4) obstruction of scenic values in all areas affected. All of the above will have an environmental impact concerning either the Four Mile Creek Alternative or TRRC's proposed alignment.

Furthermore, due to enlargement and repair of the Tongue River Dam and Reservoir we have heard that there is a possibility of changing the route of the current public access road at the northern end of the reservoir. The reason for this would be to insure access in the event of flood to Tongue River Dam. As the water level of Tongue River Reservoir will be raised after enlargement the threat of flood to the main access road on the north side of the reservoir will be greater. If the main access road along the north end of the Reservoir is changed in route then would not TRRC's current alignment conflict with this change? Would not recreational access, fishing access, and access to private cabins be affected as well? The reason that I mention this is because the buffer area between the proposed railroad and the state recreation area(including Cormorant Estates) on the north-west end of the Reservoir is much smaller. At the northern end of the 4-mile portion of the alignment that was changed, the route was moved only 300 feet further west of the original alignment. Might this not interfere with a possible route change of the main access road along the north side of the Reservoir? Also, I feel that the buffer area between the proposed railroad and Cormorant Estates on the north end of the Reservoir should be much larger. The proposed railroad is much too close to Cormorant Estates and the Reservoir on the north-west end. At the southern end, near the terminus at Decker, the route was moved from 1/4 of a mile to 1 and 1/2 miles west of the original route to provide a larger buffer between the proposed railroad and the state recreation area. Why was this enlargement of buffer area not considered at the northern end of the Reservoir so as to avoid environmental impact to Cormorant Estates and the Reservoir?

For all of the above reasons I am opposed to TRRC's current proposed route and the Four Mile Creek Alternative. I think that the only viable alternative is the "no build" alternative. I believe this because the proposed Extension and related environmental impacts would not occur. In the DEIS, SEA preliminarily concluded that TRRC's proposed route would have significant adverse environmental effects. I do not believe that these adverse environmental effects have been successfully mitigated, especially concerning Cormorant Estates and affected area on north-west and and north end of Reservoir.

Thank you for your cooperation and patience on our behalf. Thank you.

Sincerely, Sincerely, Sincerely,

Erika K. Day Kazuaki Tatsuzaki John A. Day

Erika K. Day Katsuaki Tatsuzaki John A. Day

May 1, 1994

Property Owners
Lot 7; Cormorant Estates
Sheridan, WY

OFFICE OF ECONOMICS DIRECTOR'S OFFICE MAY 11 10 13 AM '94 INTERSTATE COMMERCE COMMISSION

RECEIVED MAIL MANAGEMENT ICC

Dana White
Section of Environmental Analysis
Room 3214
Interstate Commerce Commission
Washington, DC 20423

RE: Finance Docket No. ...26(Sub No. 2)

Dear Ms. White,

We as property owners in Cormorant Estates at the north end of Tongue River Reservoir are extremely concerned about TRRC's current proposed route. We have never been contacted by the owners of TRRC regarding their project and because of this we feel that our rights have been slighted by TRRC.

This project will have a very negative impact on Cormorant Estates and we cannot and will not accept the neglect by TRRC to appropriately mitigate our concerns. If this railroad is built as proposed, Cormorant Estates property owners will not only see their property values greatly decrease, but we will also be affected by much greater noise pollution and air pollution from trains. The sight of trains running through Cormorant Estates will be an eyesore for all of us. We cannot accept this.

In the Supplement to Draft Environmental Impact Statement(page 15), it was stated that TRRC's current alignment was designed to avoid conflicts with the Tongue River Reservoir State Recreation area. How can a railroad this close to Tongue River Reservoir avoid conflicts with the State Recreation area? Also it was stated that the route was moved approximately 300 feet further west at the northern end to avoid private cabins. We don't see any evidence that this will avoid private cabins and we see much evidence to the contrary that it will completely destroy the cabin of Mr. Maurice E. Bousquet on Lot 4 of Cormorant Estates. Why is there such a difference in the buffer area at the northern end of TRRC's current alignment compared to the southern and near the terminus at Decker? Why did not TRRC make a much larger buffer area at the northern end of the 4-mile portion of the alignment that was changed, to avoid Cormorant Estates?

We feel that TRRC is going out of its way to address the concerns of MT DNRC and the Montana Dept. of Fish, Wildlife and Parks. However, we feel that TRRC is doing absolutely nothing to address the environmental impact to Cormorant Estates. Therefore, we feel that the "no build" alternative is the only viable alternative that we can accept. Thank you for your consideration of our views. Thank you.

Sincerely,
Property Owners
Lot 7; Cormorant Estates

Keiko Tatsuzaki Tatsuaki Tatsuzaki John A. Day Erica Day Lauren Day Thomas Poland

377 Giffen Coulee
Stockett, MT 59480
May 4, 1994

Dana White
Section of Environmental Analysis
Room 3214
Interstate Commerce Commission
Washington, DC 20423

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

Dear Ms. White,

Please accept the attached comments on the proposed Tongue River Railroad, and thank you for your thorough look at the implications of this huge project. The Tongue River country was my first home in Montana thirty years ago. Nothing else is quite like it.

I don't know if the enclosed format is appropriate, but I wanted to give the Commission something besides the thousands of words which have already been written opposing this project on every possible grounds. Here are the results, from my primitive country darkroom.

Thank you for your time.

Sincerely yours,

Lauran Emerson Dundee

cc: Mr. Thomas Ebzery

Comments
on the
proposed
Tongue River Railroad
from
Ashland to Decker, Montana

Finance Docket No. 30186 (Sub No. 2)

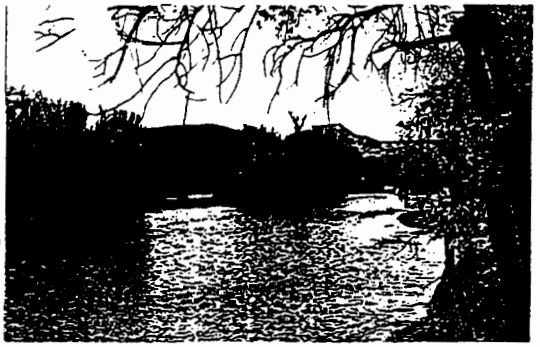
To the
Interstate Commerce Commission
Washington, DC 20423

From
Lauran Emerson Dundee
377 Giffen Coulee
Stockett, MT 59480

On behalf of the "No Build" alternative for the Ashland-to-Decker Tongue River Railroad:

Tongue River is the last major river in Montana that does not have a major transportation route running along its length. The valley is quiet. It is natural. It is completely unique.

A railroad from Ashland to Decker would entirely change the nature of this river valley. There is no way to "mitigate" this fact. It is the very absence of a paved highway or railroad that makes Tongue River Valley so special.



Land is not made anymore. This is some of the best that there is. It is well tended, and in return it offers livelihoods, food, a place for recreation, peace and solitude.

There is no other place like it. Please save it. Future generations will thank you.

Comments and photographs (all of Tongue River Valley) by Lauren Edmiston Dundee of Stockton, Montana. The text, "Land is not made anymore," is from a poem by Henry Real Bird of Crow town, Montana.

MARK FIX COMMENTS

1

I FEEL THAT ECONOMIC NOT ENVIRONMENTAL REASONS WERE THE MOTIVATION FOR THIS SUPPLEMENT MY INTERPRETATION OF THE SUPPLEMENT WAS THAT BOTH ROUTES ARE ENVIRONMENTALLY BAD BUT THE ECONOMIC FOREAST OF THE FOUR MILE CREEK ALTERNATIVE IS WORSE. THIS SEEMS TO BE REASONS WHICH SHOULD LEAD TO THE NO ACTION ALTERNATIVE AS THE BEST ALTERNATIVE. IF THE ECONOMIC REASONS ARE TO BE CONSIDERED THEN THE DAMAGE TO THE ECONOMICS OF MONTANA SHOULD ALSO BE INCLUDED IE DAMAGE TO MONTANA COAL INDUSTRY, DAMAGE TO FARM & RANCH INCOME ALONG THE ROUTE AND DAMAGE TO TOWNS AND PEOPLE WHO DEPEND ON THE COAL INDUSTRY AND FARM AND RANCH INDUSTRY BUSINESS ONE THING THAT SEEMED ODD IN THE SUPPLEMENT WAS THE COMPARISON OF FILL ON THE PREFERRED ROUTE VERSUS THE FOUR MILE CREEK ALTERNATIVE. THE FILL WILL BE MORE DUE TO THE GRADE BUT WON'T IT BE MORE EXPANSIVE TO REMOVE THE DIRT FOR THE TUNNELS THAN MOVING DIRT ON THE

2

GRADE? IT ALSO SEEMS THE ECONOMICS INVOLVED WITH BUILDING BRIDGES AND SHORING AND BUILDING TUNNELS ALONG THE PREFERRED ROUTE WOULD FAR EXCEED THE COST TO MOVE THE DIRT ON THE FOUR MILE CREEK ALTERNATIVE. IN THE SUPPLEMENT UNDER FLAGNOTE 11 IT APPEARS THAT THE PROPOSED ROUTE HAS CHANGED. IT APPEARS THAT THIS AGREEMENT WAS SIGNED BETWEEN THE SEA AND TONGUE RIVER RAILROAD WE THE PEOPLE WHO ARE OPPOSED TO THE TRAIL WERE NOT NOTIFIED OF THIS CHANGE. I THOUGHT THAT THIS WAS A PROCESS WHICH INVOLVED HEARINGS AND ENDEAVORED TO HEAR BOTH SIDES OF THE ISSUE AND GIVE BOTH SIDES A CHANCE TO COMMENT. DO THE POSSIBLE NEW LANDOWNERS HAVE ANY IDEA THAT THE NEW ROUTE IS THROUGH THEIR LAND NOW INSTEAD OF THEIR NEIGHBORS? WILL THE ROUTE BE CHANGED IN THE FUTURE WITHOUT OUR KNOWLEDGE AND SUDDENLY GO THROUGH THE MORE ENVIRONMENTALLY SENSITIVE LAND OR THROUGH THE

2

RESERVATION OR ACROSS THE TONGUE RIVER DAM?

I FEEL THAT THE NO ACTION ALTERNATIVE IS THE BEST AND ONLY VIABLE ALTERNATIVE BOTH THE PREFERRED AND FOUR MILE CREEK ALTERNATIVE POSE ORASTIC ECONOMIC AND ENVIRONMENTAL IMPACT TO MONTANA AND MONTANA PEOPLE. AS WAS STATED IN THE SUPPLEMENT DECKER IS ALREADY SERVED BY RAIL SERVICE. AS WAS ALSO STATED MONTCOMINE IS ALREADY SERVED BY THE ORIGINAL 89 MILE LINE. MONTCO IS NOT OPERATIONAL AND NEITHER IS THE ORIGINAL 89 MILE LINE AND I HOPE IT STAYS THAT WAY. I AM A LANDOWNER ON THE ORIGINAL 89 MILES THAT WOULD BE AFFECTED.

I STILL FEEL THAT THE TOTAL ROUTE SHOULD BE INCLUDED IN THE EIS NOT JUST THE EXTENSION. I UNDERSTAND THAT JUDGE CROSS ALSO FELT THAT THE EIS SHOULD COVER THE ENTIRE ROUTE NOT JUST THE EXTENSION. IT SEEMS THAT ONLY TRR CAN TIE THE TWO TOGETHER BUT NOT THE OPPOSITION IE. THE KEEPS REFERING TO THINGS IN THE 89

4

MILE EIS THAT MAY OR MAY NOT STILL BE VALID SINCE ITS WRITING.

I WOULD LIKE TO SEE A NEW SUPPLEMENT COME OUT WHICH PURSUES THE NO ACTION ALTERNATIVE AS THE PREFERRED ALTERNATIVE.

I CANNOT SPEND DAY AFTER DAY LOBBYING IN HELENA AND WITH MEMBERS OF SEA. MR. EBZERY CAN BECAUSE THAT IS WHAT HE IS PAID TO DO. I ON THE OTHER HAND NEED TO CONCERN MYSELF WITH RUNNING MY RANCH WHICH TAKES MOST OF MY TIME. I FEEL STRONGLY ENOUGH ABOUT THIS SUPPLEMENT AND THE DAMAGE THAT THIS RAILROAD WOULD DO THAT I FEEL I NEED TO COMMENT. NO ONE IS PAYING ME TO COMMENT.

NO ONE FROM TRR HAS YET CONTACTED ME AND I AM NOT INVOLVED IN THE ORIGINAL 89 MILE EIS. I PURCHASED THE RANCH AFTER THE 89 MILE EIS WAS WRITTEN.

450299

April 1, 1994

FD 30186 (2)

Dana White, Section of Environmental Analysis
Room 3214
Interstate Commerce Commission
Washington, DC 20423

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

Dear Ms. White:

In a letter to you dated Jan. 13, 1994 (enclosed), I asked a number of fairly specific questions regarding conclusions the SEE made about an environmentally preferrable route for the TRR project. I was told by Elaine Kaiser in a letter (also enclosed) dated Feb. 9, 1994, that my specific questions would be answered in the Supplement. Please reconsider answering my questions, as none have been answered in the Supplement.

In Montana, if a coal company is interested in developing a mine that might potentially disturb two square miles of native vegetation, baseline biological studies are initiated by the company under the guidance of Montana Department of State Lands as soon as the permitting process begins. These studies include in-depth soil, vegetation, aquatic and fisheries, and wildlife inventories, to name a few. The wildlife aspect alone requires, at a minimum, four-season studies from project initiation, through the permitting process, mine operation, reclamation and closure. These studies are for a relatively small area of disturbance. The proposed Consolidation Coal CX Ranch Mine near Decker, Montana began biological studies in 1979 when they initiated the permitting process. When they had completed the requirements for their permit, they had conducted nearly 9 years of four-season studies. Remember, we're talking about a disturbance area of under two square miles.

Please explain to me how a project as vast as the proposed TRR can write an EIS, and ask for a permit without conducting as much as one week of original biological inventories. There have been no wildlife studies, no vegetation studies, no soils studies, no aquatic or fisheries studies. There was also no previous data that had been gathered within ten years for this area upon which to "extrapolate" or "tier."

How could SEA write a document, the purpose (NEPA) of which is to inform the public, if there was no data gathered to analyze and upon which to speculate about impacts? How can the public possibly use this document to make informed decisions?

In view of the total lack of survey data provided to SEA upon which to write an EIS in the first place, it stuns me that SEA could change its mind and determine that it had enough information to say that it was wrong in suggesting that the Fourmile Alternative was not environmentally sound. SEA supposedly "visited" the site with its biological consultant as part of the process to make this decision. I can tell you right now that the biological consultant that visited the site was absolutely not one of the people involved with writing the biological support documents provided to SEA for writing the original EIS. This person and SEA associates who visited the area must certainly be wizards with magic wands who can suggest changes to the DEIS preferred route which was also based on no original data.

I am amazed that these god-like decisions can be made and then changed on apparent whim. It's also an amazing coincidence that the route originally determined to be the most sensible environmentally is also much costlier and slower to TRR. SEA must have been equally amazed that the railroad company was right in the first place, and they, with all their data and analysis were wrong.

If SEA puts so much stock in comments on the DEIS that with those (and a little on-site waving of magic wands) they determine that TRR's preferred route was, in fact, the most environmentally sound, how can they overlook the fact that "most of the written comments SEA received to the DEIS expressed the opinion that the Extension should not be built at all" (p. 2 Supplemental to DEIS).

Please explain to me why we need this railroad just because the TRR Company wants to build one. It will destroy wildlife habitats, daily and seasonal migration corridors for a wide variety of game and non-game species, the incredible scenic values of the Tongue River Valley, and totally change a way of life for landowners whose families have lived quiet ranching lives in the valley since the 1880s. There are absolutely no mitigations that can change these facts. Mitigation is a trendy little catch-word that EIS writers and developers embrace because it makes their jobs easier and their developments sound more benign. Please realize that although you may be able to mitigate total environmental disaster from the construction and the operation of this project, there are far more impacts that you just can't slap some mitigation on to soften or make the damage go away.

The Tongue River Valley is a relatively undisturbed one with a very special way of life enjoyed by its inhabitants. Noises and dust here come mostly from livestock and pickups on dusty roads. On spring mornings, the smell is of budding cottonwood and the sounds are of crowing pheasants, dancing sharp-tailed grouse, and gobbling turkeys. If it is not enough that these things, among countless others, would be lost to the din of trains and the stink of diesel smoke, economic studies (DNRC and Duffield-Heher studies) point to possible local and regional economic dislocation.

So why even consider this project? To me it seems clear that there are absolutely no reasons the ICC should consider granting a permit to TRR.

Please do not become swallowed up by the seeming importance of EISs and Supplemental EISs and the "answers" they seem to provide. A quality EIS can be a tool used to help make informed decisions, but even a good EIS does not provide answers or solve problems.

Listen to your hearts. Anyone with a clear mind, open eyes and a real understanding of what will be lost forever if this project is allowed to proceed cannot believe in a public involvement process (NEPA) that would suggest that it should proceed.

That the ICC could approve of the 89 mile section of the TRR from Miles City to Ashland is beyond belief. That the ICC did should not enter into the equation for determining the merits of this proposed 41 mile section from Ashland to Decker. Two wrongs do not make a right.

Please, do not approve of this proposed project.

Thank you for the opportunity to comment.

Sincerely,

Steven McGilbert

Steve Gilbert
721 Second
Helena, Montana 59601

May 2, 1994

Dana White, Section of Environmental Analysis
Room 3214
Interstate Commerce Commission
Re: Finance Docket No. 30186 (Sub No.2)

Dear Ms. White:

Following are my comments:

As far a I know no landowner along the TRRC route south of the town of Birney has given anyone associated with the TRRC permiseion to enter their property. How did TRRC gather the information needed to change the route recommendation?

Despite the TRRC alleged magnanimity in changing their original route alignment along the Tongue River Reservoir, that route was only changed right after the TRRC learned that their original route wes crossing newly acquired Northern Cheyenne Lands.

I noticed that on page 21 of the Supplement To Draft Environmental Impact Statement, the TRRC propses to serve the Montco Mine which has an estimated annual coal production capacity of 38 million ton' While in the Summary of the Montco Mine-the Montco Mine proposes a maximum production rate of 12 million tons per year' This is a wonderous three fold increase without yet having even produced one pound of coal.

If the proposed route was not environmentally sound in the original EIS, writing a supplent won't make it environmentally sound. The no build alternative is the only alternative.

Sincerely,

Art Hayes Jr.
R Bar Ranch
Birney, Montana 59012

RECEIVED
OFFICE OF ECONOMICS
DIRECTOR'S OFFICE

MAY 11 10 13 AM '94

INTERSTATE COMMERCE
COMMISSION

May 1, 1994

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

Dana White
Section of Environmental Analysis, Room 3214
Interstate Commerce Commission
Washington, DC 20423

Dear Mr. White:

As land owners who would be directly impacted by the TRRC's proposed Four Mile Creek Alternative, we are totally opposed to having a railroad come through that beautiful and pristine country. It would impact our ranching operation very negatively. We completely support the "no build alternative" There is no need for this railroad, and it would have a most negative impact for decades on the Tongue River Valley, its inhabitants, and its environment. The only feasible alternative is not to build the railroad at all.

Sincerely,

Penny Ickel

Penny Ickel

Jerry Ickel

Jerry Ickel

Big Bend Ranch, Inc.
HC42, Box 640
Busby, MT 59016

cc: Mr Thomas Ebzery

Ms. Dana White
Section of Environmental Analysis
Room 3214
Interstate Commerce Commission
Washington, DC 20423

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

Dear Ms. White:

The Tongue River Railroad extension start point lies on a ranch which I own and operate. I leased surface rights to the Montco mine in 1974 and have followed the activities of coal development in southeastern Montana for some time.

I support the ICC's recommendation of the Tongue River Railroad's proposed alignment. Several years ago I was provided maps of the alignment through this area and to the extent possible the TRR has avoided the Tongue River bottomlands and productive hay production areas. The TRR also identified proposed locations for cattle passes and grade crossings. It is my understanding that the details of the alignment and these features will be settled during the land acquisition process.

A major goal of the proposed mitigation plan contained in the TRR's application is to minimize the effect of the railroad on ranch operations. Having been associated with the partners of the railroad since the early 1970's, I see no reason why this goal will not be met.

I have supported the development of the high quality coal reserves in this area and continue to do so today and encourage the ICC's approval of TRR's proposed alignment application.

Thank you for your consideration of my comments.

Sincerely,

Jack Knobloch

Jack Knobloch

GENE H. KURTZ
FIELD UNDERWRITER
LIFE HEALTH GROUP INS.
ANNUITIES PENSIONS
158 N. 9th AVE. BOX 830
FORSYTH, MONTANA 59327
PH: 356-7822

May 4, 1994

Interstate Commerce Commission
Section of Environmental Analysis
Room 3214
Finance Docket #30186 (sub # 2)
Attn: Dana White

Dear Mr. White:

This letter is to urge the I.C.C. to select the No Build option regarding the Tongue River Railroad. It seems apparent to even the casual observer that the damage that would be done to this scenic and pristine area would be a tragedy. The river, the wildlife, the sacred Indian burial grounds, and the damage to area ranches are enough reasons for any thinking person to conclude that this railroad should not be built!

Sincerely,

Gene H. Kurtz

Gene H. Kurtz
box 830
Forsyth, Mt. 59327

Andrew Lemann
Box 487
Birney, MT. 59012

To: Dana White
Section of Environmental Analysis
Room 3214
Interstate Commerce Commission
Washington, D.C. 20423

April 23,1994.

Re:Finance Docket 30186 (Sub No.2)

COMMENTS ON THE SUPPLEMENT TO THE D.E.I.S. FOR THE TONGUE RIVER RAILROAD.

Before publication of this supplement the Draft E.I.S. for the Tongue River Railroad was an incomplete farce. Now, thanks to the inclusion of the supplement, it can safely be called a complete farce

Not one of the multitude of glaring inadequacies in the D.E.I.S. has been rectified by this addition. In stead the outrageous bias in favor of TRRC has simply been amplified. Rather than face up to the fact that "mitigating" the adverse effects of this proposal would be impossible, the SEA has simply bent in favour of TRRC's preferred route while insulting their own intelligence by labelling the no build alternative "environmentally neutral".

To say that 'the "no action" alternative would be environmentally neutral' while declaring TRRC's proposed route to be environmentally preferable to the Four Mile Creek Alternative' is like saying that to not commit murder would be socially neutral while killing the odd one or two would be socially preferable to a good old mass murder.

Here the farce begins for to call the "no action" option "neutral" raises the question; neutral compared to what? and prompts the answer; well, neutral compared to not doing anything at all. So we learn that the "no action" alternative is neutral compared with doing nothing. Brilliant!

If however we were to compare the "no action" option, as we should, with either the Four Mile Creek or TRRC's preferred route we would have to conclude that in fact the "no action" option is the only environmentally acceptable alternative.

On the other hand, if we wanted a real laugh, we could ask why is the no action option considered environmentally neutral? And we would find the answer clearly stated no less than four times in this supplement.(In two slightly differing passages, the first on pages ii and iv and the

second on pages 21 and 22, each one repeated within a page or two in case anyone missed the punch-line). The no action option is considered environmentally neutral by the SEA because "some of the potential impacts associated with the proposed extension from Ashland to Decker could occur. (Astounding!) The previously authorized 89-mile line from Miles City to Ashland, designed to serve new mines in Montana, could still be constructed and operated. Moreover, the present movement of coal from the Decker area would be unaffected and would continue to be transported along the existing Burlington Northern line which now serves the Powder River Basin." In other words all existing and proposed coal mines in the area are already catered for by the existing or permitted railroads. Or to put it as simply as possible there is no need for the proposed extension. This is the clearest argument in favour of the "no action" alternative that could be made! The joke is that by stating the obvious, that there is no "public need" for this extension, the supplement proves that this entire process is a complete waste of time.

Another amusing aspect of the supplement is that while it clearly states on page 2 that "most of the written comments SEA received to the DEIS expressed the opinion that the Extension should not be built at all" the only comments given any weight in the supplement are those from the Tongue River Railroad Company. "TRRC argued that the Four Mile Creek Alternative would be unsafe and economically unfeasible" and lo-and-behold, after "extensive" site visits with TRRC's environmental consultant and engineer and "careful consideration", the "SEA now believes that TRRC's current preferred alignment would be environmentally preferable". Miraculous!

In fact by reversing their previous position the SEA has successfully proven (within the capabilities of such an inadequate investigation) that both the TRRC's preferred alignment and the Four Mile Creek Alternative are environmentally unacceptable. Both would result in "adverse effects to aquatic resources, wildlife habitat, farming and ranching operations, and scenic and recreational values" plus "impacts on the Northern Cheyenne Indian Reservation."

The proposed route would involve "disturbing an environmentally sensitive 10-mile section of the Tongue River","the need to construct five bridges and a tunnel", and "impacts to the Tongue River State Park and the Cormorant Estates." It would also have adverse "impacts to recreational resources, fisheries, and (most importantly) the integrity of the Tongue River."

Not once in this industrious study are the words beauty or tranquility even mentioned, yet to anyone who knows the Tongue River, these are its greatest attributes and the best reason for not building a railroad down the valley.

The Four Mile Creek route "would entail extensive cuts and fills, significant deforestation, effects on residences, increased fuel consumption and air pollution", it would also be less safe to operate and according to TRRC, be economically unfeasible.

A study of the "Comparative Environmental Impact Table" in Appendix B-5 shows so little difference between the two routes in terms of the severity of their impacts on the Tongue River Valley that neither can justifiably be called "environmentally preferable".

Contrary to the opinion of the SEA I do not believe that the adverse effects of either route could be adequately mitigated. With all other possible options having been ruled out, plus the fact that the "public need" is already amply served, we are left with the no build option as the only possible choice.

Signed

Andrew Norman Lemann

Dana White, Section of Environmental Analysis
Interstate Commerce Commission
Room 3214
Washington, D. C. 20423

May 4,1994

Re: Finance Docket 30186 (Sub No.2)

Dear Sir:

This letter is in regard to the request by the nonexistant Tongue River Railroad to extend its heretofore nonexistant railroad track in order that a few companies and their managers will realize a greater (more than presently enjoyed) profit at the expense of several communities and possible irreparable harm to the pristine and fragile environment of the Tongue River Valley.

For the record this writer lived in the town of Forsyth for 38 years (age 4 to age 42). I was employed by the former Northern Pacific Railroad in 1963 at the age of 18. My Father, Dave LaGree, served as Rosebud County Treasurer for 16 years. For the past seven years I have served as a Vice Chairman on the General Committe of Adjustment of the Burlington Northern Railroad for the Brotherhood of Locomotive Engineers.

In regard to the request by The Tongue River Railroad for an extension of its presently undeveloped permit I ask the Commission not to render a hasty or inadequately researched decision, for the decisions the ICC makes are not made in vacuums. They effect real people and real communities and their consequences are too often devasting to the people, communities and environment of the involved region. Such is the case surrounding the Tongue River Railroad. Simply put there is no, none, nada, not one sound reason for the Tongue River Railroad to be granted anything. Rather in light of the fact that not one tie has been laid, and not one spike driven the proper question to be considered by the commission is the extinguishment of the original dockett that permitted construction because the time limits for same have been completely and utterly disregarded by the petitioner.

The Commission has stated the public hearings held at Sheridan, Forsyth, Lame Deer and Miles City were mixed. This writer is having a small problem understanding how you reached your conclusion. If the information provided to us is correct in regard to the hearings, Miles City is the only location at which testimony was given in support of the extension. Surely even the commission realizes the support at Miles City was self-serving in order that their community would experience a short term gain in temporary construction phase jobs while the other communities involved would suffer economic disaster.

Other issuees the Commission should address are: In the event of a derailment does the petitioner have the funds, expertise, and equipment to pay for and clean-up a derailment; what if a derailment involved a hazardous material spill contaminating surrounding ranches or the Tongue River itself; is the dam at Tongue River Reservoir cable of withstanding the stress of construction and operation of such a railroad. These issues, along with the total lack of need for any additional railroads in this region, must be given consideration by the commission.

If the Commission will carefully weigh all information provided on this proposal and take measures to insure the validity of the information presented by both parties the Commission must agree the greater weight of the documentation and the greater good of the involved communities lies with denial of the request made by the TRR. Further, if the commission denies the extension, this writer requests the Commission to extinguish the original dockett granting the construction of the Tongue River Railroad in light of the fact that the petitioners have not seen fit to develope that which the Commission so long ago granted. I resind the Commission the original approval for construction was not granted in perpetuity.

Very Truly Yours,

David J. LaGree

David J. LaGree

-2-

RE: Finance Docket No. 30186 — 2

Dana White
Section of Enviromental Anaiysis
Rooe 3214
Interstate Commerce Commission
Washington, DC 20423

Dear Ms White:

This has to do with the Tongue River Railroad proposal to construct and operate a 41 mile extention from Ashland, MT to Decker, MT.

My name is Clifford L. Locke and I live in Forsyth, MT.,and I am a railroader of some twenty years seniority.

I am just one man, one man among many but I ask you to vote against the extension and for people, for small towns, for the ability to raise our families, with fine schools, clean air and a very low crime rate.

This extension is unwanted and unneeded by the great majority of the people it would directly affect. Majority is supposed to rule in a free enterprise system and for just once you could vote against something which will have long term and lasting effect on many different kinds of people. Ranchers who will lose prime bottom land that they need to grow feed for their cattle, and a pristine river valley. Miners who will loss the competitive edge the longer transportation route provides. Railroaders who will have to op root their families and move out of state and business people who will lose the revenue provided by wages no longer available from miners and Railroaders.

The tumble down effect on the economy and the catastrophic effect on the loss of taxes. because of something which will bypass Montana mines making them economically unfeasible.

Burlington Northern railroad handles the transportation of coal from Gillette Wyoming mines and Spring Creek mines in Montana very effectively. We are already running redoced crews (2 man) on our Sheridan coal runs.

No economic benefit except to a few eletric companies which will not be handed down to its consumers. I urge you to vote no to the build option.

yours truly

Clifford L. Locke

Clifford L. Locke
UTU Legislative Representative
Local 486

CLIFF LOCKE
BOX 1141
FORSYTH, MT. 59327-1141

May 4, 1994

Dana White, Section of Enviroomental Anaiysis
Interstate Commerce Commission
Room 3214
Washington, D.C. 20423

Finance Docket 30186 (Sub No. 2)

Dear Ms. White:

My husband and I are the owners of the Royal Oaks Inn in Forsyth, Montana. We house railroad crews coming from Sheridan, Wyoming. This is our only source of income. The Inn was remodeled to supply the needs of the railroad per their contract requirements. We would need to do extensive remodeling to meet the public demands.

If the Tongue River Railroad was built the crews from Sheridan, Wyoming would no longer be necessary. This would put us into bankruptcy and put our employees on the unemployment roles. Jobs are not that plentiful in Forsyth, Montana.

The Decker mines are being served by BN on an existing line, so there is absolutely no reason to construct a new railroad to duplicate the existing route.

The only action on this is "NO ACTION". It is not necessary to kill a small town when it is not necessary. Our town depends on the Burlington Northern Railroad's crews. Burlington Northern Railroad crews living in Forsyth would be forced elsewhere to work leaving us with empty homes and closing many of the businesses which rely on their buying power.

Sincerely,

Betty Martineau

Betty Martineau, Owner
Royal Oaks Inn
Box 911
Forsyth, Montana 59327

ENTERED
Office of the Secretary
MAY 16 1994
Part of Public Record

May 7, 1994

Attention: Dana White
Environmental Analyst
Interstate Commerce Commission
Washington, DC 20423-1001

FD 30186-2

Dear Ms. White,

It has recently been suggested that I write to you concerning the proposed Tongue River Railroad, and possible impacts on the development of significant historic resources in the Tongue River Valley.

I am writing as a private individual. However, I work closely with several historical groups, including a new organization in the process of being formed, the Frontier Heritage Alliance, which is to be a non-profit 501 (c) (3) with the mission to facilitate communications, cooperation and coordination among entities, as well as the preservation, development, interpretation and promotion of historic resources relating primarily to the Indian Wars on the Northern Plains. We expect to work with national entities, primarily of the Department of the Interior and including the National Park Service, Bureau of Land Management, Bureau of Indian Affairs, and the Bureau of Reclamation; the U.S. Forest Service; and regional, state, and local governmental groups as well as with private foundations, non-profits, and individuals.

At this time, we are organized with a steering committee including several historians (white and Native American); and Directors of the Montana State Fish, Wildlife and Parks and the Wyoming State Parks and Cultural Resources Division of the Department of Commerce. (Please note that I can in no way speak for any of these entities other than myself.) We plan to encompass a five state region including Wyoming, Montana, South and North Dakota and Nebraska, and will probably concentrate at the beginning on the Indian Wars campaigns of General George Crook. Our initial focus has not been firmed up, however.

This history takes us through the five states mentioned, and draws in Crook's campaign at the Rosebud Battlefield State Park (located some six miles from the Tongue River dam site); down the Tongue River, and on through the other states mentioned. Our plan is to pull in the history of pre-historic and historic Indian tribes in the area, Indian cultures, including the vast encampments along the Tongue River where thousands camped previous to their campaign to the Fetterman Ridge near Fort Phil Kearny in Wyoming; significant battlesites; military strategies and their meaning for today; the relationship of the early 1866 Indian Wars history to the Rosebud and Little Bighorn battles nearly a decade later, etc.

We are working also with the military command out of Fort Leavenworth, Kansas, who use the Fetterman and Wagon Box sites in Wyoming and the Rosebud site in Montana extensively as training grounds for their classes in "irregular warfare".

Also, we are looking closely at the National Heritage Area concepts and at several bills being proposed in Congress in regard to these areas, as well as at the possibility of working with the American Battlefields Protection Program, which now is focusing on the Civil War sites but which has asked for materials relating to the Indian Wars sites.

In addition, our group has proposed historical interpretation at the site of the Tongue River dam expansion, and have communicated with a number of the entities involved. This area would be ideal to present not only the Indian Wars history as mentioned above, but also the early homesteading, ranching, coal and development, water, and the history of the formation of the Cheyenne reservation.

I personally oppose the railroad route through the culturally rich and unique Tongue River Valley as I feel it would detract considerably from our efforts to preserve and interpret the history of this area...even destroy, in its building, many sites to date not explored. Our organization will be meeting this coming Wednesday, May 11, in Sheridan, with directors of the Montana and Wyoming State Parks systems, the regional director of the National Park Service, a "partnerships" expert of the U.S. Forest Service, and others, to better determine our initial focus. Would it be possible that this organization might have further input as we go along, into your considerations?

Thank you.

Sincerely,

Mary Ellen McWilliams
1004 Big Goose Road
Sheridan, WY 82801

Note: I am enclosing a copy of the Fort Phil Kearny/Bozeman Trail Association newsletter which includes a Bozeman Trail Days schedule of events, including a tour to the Tongue River camps of the Sioux, Cheyenne and Arapaho in 1866, from which the attack on the military at Fort Phil Kearny was initiated. Perhaps someone from the ICC might wish to attend that tour.

Copies to Wesco Resources; Northern Plains Resource Council; Ken Kerns, Frontier Heritage Alliance; Mark Kinner, Fort Phil Kearny/Bozeman Trail Association.

Linda Moore
Buffalo, Wy. 82834

Dana White, Sec of Environmental Analysis
Interstate Commerce Commission
Room 3214
Washington, D.C. 20423
RE: Finance Docket 30186 (Sub No. 2)

April 29 1994

To Whom It May Concern:
I want to go on record in support of the "No Action Alternative" to the TRR.
Please leave the beautiful pristine Valley of the Tongue river as it is!

Very Sincerely,
Linda Moore

April 20, 1994

Dana White
Section of Environmental Analysis
Room 3214
Interstate Commerce Commission
Washington, D. C. 20423

Comments on the Supplement:

I favor the "No Build" decision on the Tongue River Railroad's application to build a railroad from Ashland to Decker, Mont. There is not a need for this. Coal is being transported. The only need is for the investors to make a profit.

In the meantime ranchers in our wonderful Tongue River valley would have their ranches devastated. The ranchers up and down the valley pay dearly in hardships of harsh winters....summers that are sometimes drouthy....good and poor cattle prices.... all of these just to have a way of life that they and their families love. A railroad would do nothing for this.

I have 40 acres which your "alternative plan" would cut thru. I have a trailer on it and do so enjoy spending time there. My oldest son, Ted Musgrave, is buried there, overlooking the river which he dearly loved. In no way do I want a railroad on this land. It is a very peaceful, special place. For exaeple:

Last Sunday evening I wee looking thru the binoculars at a half dozen mule deer on a neer meedow. While looking I heard wild turkeys gobbling, meadowlarks singing and saw some pelicans land on the river. There are so many river animals and birds. Coyotes howl nearby.

I can't believe that a noisy, busy railroad could do anything but to destroy a scarce, wonderful place. Please, please recommend the "No Build" solution.

Sincerely,

Berniece Musgrave
620 W. Loucks Sheridan, Wyo. 82801
and
Decker, Montana 59025

RECEIVED
OFFICE OF ECONOMICS
DIRECTOR'S OFFICE

April 30, 1994

Interstate Commerce Commission
Washington DC 20423-0001

re: Finance Docket No. 30186 (Sub-No. 2)

Dear Sirs:

This is a letter of objection to the proposed construction and operation of The Tongue River Railroad Company from Ashland to Decker, Montana.

The current, preferred route of the TRRC would threaten thenormalcy of the existing wildlife in the area, including interfering with certain nesting areas of the American Bald Eagle and probably the Golden Eagle.

We have visited the area and have been impressed by the beauty of the native wildlife and are concerned about their safety and the protection of their continued existence.

Our family plans to relocate to that area and we are disturbed about the disruption of the native animals and the effects of the planned construction on the land in the area.

What impact would the planned construction, or properly described, destruction have on the native wildlife? What impact would it have on the area land? What plans have been made to overcome any environmental problems and to assure the safety and protection of the wildlife?

What assurances do we have that the TRRC is a responsible organization? What is their track record and past history? Has the TRRC fulfilled ALL obligations in the past and can it be relied on to comply with ALL promises, contracts and regulations local, state and Federal? Are they aware of the public concerns and do they realize that environmental proctection outweighs outweighs the business advantages they seek?

Respectfully,
Joseph A. Oberth
332 Wabash Avenue NW
New Philadelphia OH 44663

April 30, 1994

Interstate Commerce Commission
Washington DC 20423-0001

re: Finace Docket No. 30186 (Sub-No. 2)
Tongue River Railroad extension

I anticipate that you will give serious thought to the public concerns and provide the answers to the concerns and questions.

I would welcome the opportunity to attend any official hearings by the ICC that may be open to the public re this subject, including the opportunity to voice objections in person.

Respectfully,
Joseph A. Oberth
332 Wabash Avenue NW
New Philadelphia OH 44663

RECEIVED
OFFICE OF ECONOMICS
DIRECTOR'S OFFICE

INTERSTATE COMMERCE COMMISSION

May 1, 1994

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

Dana White
Section of Environmental Analysis, Room 3214
Interstate Commerce Commission
Washington, DC 20423

Dear Mr. White:

I am a long-time land owner whose land would be directly impacted by the TRRC's proposed Four Mile Creek Alternative. I am very much opposed to having a railroad come through our relatively unspoiled ranch. It would be very difficult to continue our ranching operations. I clearly support the "no build alternative". I and my family do not see the need for this railroad. The Tongue River Valley would never be the same, which would be a tragedy.

Sincerely,

Nathalie Penson

Nathalie Penson

Big Bend Ranch, Inc.
HC42, Box 640
Busby, MT 59016

cc: Mr. Thomas Ebzery

Terrance Poland
Donna Bumpo
Drawer 9
Hardin, Mt. 59034

Dana White
Section of Environmental Analysis
Room 3214
Interstate Commerce Commission
Washington, DC 20423

In Reference to Finance Docket No. 30186(Sub No. 2)

Dear Ms. White,

Concerning Finance Docket No. 30186(Sub No. 2), I'm very concerned about TRRC's current proposed route versus the Four Mile Creek alternative. I have studied this document thoroughly and have come to the conclusion that the "no build" alternative would be the best because it is environmentally neutral since construction and operation of the proposed Extension and related environmental impacts would not occur.

As a property owner in Tongue River Estates, I'm very concerned about the potential impact this Tongue River Railroad will have on this area, Tongue River Valley, and Tongue River Reservoir State Recreation Area. First of all, I think that the environmental impact on these areas will be great; (1)noise from trains affecting property owners, recreation users, wildlife, etc; (2) deforestation of ponderosa pine/juniper habitat affecting wildlife and sounds values; (3)increased air pollution; and (4) destruction of scenic values to all areas affected. All of the above will have an environmental impact concerning either the Four Mile Creek Alternative or TRRC's proposed alignment.

Furthermore, due to enlargement and repair of the Tongue River Dam and Reservoir we have heard that there is a possibility of changing the route of the current public access road at the northern end of the reservoir. The reason for this would be to insure access to the resort of Closed to Tongue River Dam. As the water level of Tongue River Reservoir will be raised after enlargement the threat of Closed to the main access road on the north side of the reservoir will be greater. If the main access road along the north end of the Reservoir is changed in route then would not TRRC's current alignment conflict with this change? Could not recreational access, fishing access, and access to private acreage be affected as well? The reason that I mention this is because the buffer area between the proposed railroad and the state recreation area(including Cormorant Estates) on the north-west end of the Reservoir is much smaller. At the northern end of the b-mile portion of the alignment that was changed, the route was moved only 300 feet further west of the original alignment. Might this not interfere with a possible route change of the main access road along the north side of the Reservoir? Also, I feel that the buffer area between the proposed railroad and Cormorant Estates on the north end of the Reservoir should be much larger. The proposed railroad is much too close to Cormorant Estates and the Reservoir on the north-west end. At the southern end, near the turnaround at Decker, the route was moved from 1/4 of a mile to 1 and 1/2 miles west of the original route to provide a larger buffer between the proposed railroad and the state recreation area. Why was this enlargement of buffer area not considered at the northern end of the Reservoir so as to avoid environmental impact to Cormorant Estates and the Reservoir?

For all of the above reasons I am opposed to TRRC's current proposed route and the Four Mile Creek Alternative. I think that the only viable alternative is the "no build" alternative. I believe this because the proposed Extension and related environmental impacts would not occur. In the DEIS, SEA preliminarily concluded that TRRC's proposed route would have significant adverse environmental effects. I do not believe that these adverse environmental effects have been successfully mitigated, especially concerning Cormorant Estates and affected areas on north-west end and north end of Reservoir.

Thank you for your [illegible]

Thank you,

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OFFICE OF ECONOMIC
DIRECTOR'S OFFICE

MAY 11 10 13 AM '94

INTERSTATE COMMERCE
COMMISSION

May 1, 1994

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

Dana White
Section of Environmental Analysis, Room 3214
Interstate Commerce Commission
Washington, DC 20423

Dear Mr. White:

I am very much opposed to the TRRC's proposed Four Mile Creek alternative. As a land owner, I can see that having the railroad come through our ranch will impede our operations, as well as spoil beautiful country for a long time to come. My family and I do not see the need for this railroad. We support the "no build alternative" because of the proposed railroad's negative impact on the Tongue River Valley, the residents thereof, and the environment.

Sincerely,

Judith M. Preston

Judith M. Preston

Big Bend Ranch, Inc.
HC42, Box 640
Busby, MT 59016

cc: Mr. Thomas Ebzery

MAY 9 1994

FD-30156-3

May 6 '94

Dana White
Environmental Analysis, Rm.3214
ICC, Washington, DC 20423

I would like to make a few comments about the proposed Tongue River Railroad.
I am opposed to this plan, because I believe in would be disastrous to the beautiful and historic valley. An industrial railroad with frequent unit coal trains would forever mar, alter and degrade the valley, still much as it appeared in the days of Lewis and Clark. Indians used the valley for millenia and a railroad would certainly obliterate undiscovered archaelogical sites and perhaps forgotten burial grounds, as well as threaten known sites. Water pollution and quality are concerns and wildlife in the valley would be badly affected in terms of environment and habitat destruction and being constant victims on the track, killed by the constant stream of trains.
Ranches and farms in the valley would also be divided and many thousands of acres consumed and rendered streile and non-productive by the railroad and its right of way.
These concerns I have also include the so-called mitigation the railroad backers pledge to achieve to counter the disastrous effects. To mitigate would be to lessen or solve some problems, but there is a danger that 'mitigate' is to be used as a euphemism by the backers to minimize their own pledged efforts and rationalize failures and nonaction. I fear that if the railroad goes through 'mitigation' will have no more meaning than "reclamation" of strip mines, where at least in Wyoming, mining companies have been allowed to call an area 'reclaimed' and stop further reclamation work, leaving large pits and ugly tailings mounds of vast size.

Thank you

Nicholas Rose
514 S 29th St
Billings MT 59101
406-252-1537

May 5, 1994

Ms. Dana White
Section of Environmental Analysis, Room 3214
Interstate Commerce Commission
Washington, DC 20423

RE: Finance Docket 30186 (Sub no. 2)

Dear Dana:

As a private citizen concerned with the integrity of the Tongue River Valley, especially that part between Birney and Decker, Montana, I am commenting on the supplement to the Draft EIS on the extension of the proposed Tongue River Railroad. Montana is the "Last Best Place" and the Tongue River is one of the last unspoiled rivers of Montana. It would be a shame to spoil such a relatively remote agricultural area with the scar, noise, smell, and disruption of a railroad.

The supplement to the Draft EIS states that the No Build/No Action alternative would be environmentally neutral. Any coal mined in the Ashland, Montana area could be shipped to market via the long-ago permitted original Tongue River Railroad. Coal from the Decker, Montana and Powder River Basin in Wyoming is already being shipped via existing rail lines. The extension (from Ashland to Decker) of the already permitted Tongue River Railroad (Miles City, Montana to Ashland) is not needed.

The No Build/No Action alternative is not only environmentally neutral, but is environmentally preferred. Coal can be hauled without causing the additional environmental damage to the stretch of the Tongue River Valley from Ashland to Decker. I strongly encourage you to recommend in the Final EIS that the environmentally preferred alternative to the extension of the Tongue River Railroad is NOT to build it. I think you will agree this is the only logical conclusion to the environmental studies for the extension.

Thank you for the opportunity to comment on the Supplemental EIS. I have enclosed ten copies of my comments and forwarded one copy to Tom Ebzery.

Sincerely,

John Sanders
[illegible] South Park Avenue
Apartment No. 316
Helena, MT 59601
406 [illegible]-3243

May 4, 1994

Dana White, Section of Environmental Analysis
Interstate Commerce Commission
Room 3214
Washington, D. C. 20423

Finance Docket 30186 (Sub No. 2)

Dear Ms. White:

I believe that no government agency or person has the right to inflict damage to another. This area of the Tongue River Canyon is a stable ranching community. This canyon is very fragile and should be delt with extreme care.

I heard one comment made about a rancher. "This rancher has 22,000 acres and all we need is 120 to 200 acres." Let me tell you that 120 to 200 acres may produce 90% of his winter feed for his livestock. All these ranchers use every possible acre of this valley to make them operate a profitable operation.

Your quick dismissal of the Northern Cheyenne Indians. These Indians escaped the clutches of our Government and traveled back here to claim some of their land. This courages struggle has made them a strong people. The Tongue River Railroad would skirt about 20 miles of their traditional sacred grounds. Their traditional beliefs run deep in the blood of these people. The river is also sacred and unpolluted. Peace and quiet along with all the other things of nature is sacred to them. We do not have the right to take this away.

Now that you have comented on all the on site inspections you did to gather this information, I believe it is only fair that we get the total documentation on these trips. The reason being when we had our meeting this winter with Myiard Tagen and Donna White was there. She corrected Myiard and said you only did a fly over - this should also be documented. The other reason is that no rancher has seen any inspector team or gave any inspection team permission to be on the land. Without this documentation this whole document is flawed.

The "NO ACTION" is the only correct action to take. Things that may not seem important to you are very important to us. We are a patch work of small communities bonded together by the strengths of each other. We work and strive to keep our schools and towns viable and strong. What happens to our neighbors, happens to all of us. This is why we feel strong about protecting the beauty of the West.

BONES BROTHERS RANCH

BIRNEY, MONTANA 59013

Ashgrove and Railroad Stations Sheridan, Wyoming, and Forsyth, Montana

Telegraph and Express Address Sheridan, Wyoming

Telephone Area 406-436-2281

To: Dana White
Section of Environmental Analysis
Room 3214
Interstate Commerce Commission
Washington, D.C. 20423
Re: Finance Docket 30186 (Sub.No.2)

Dear Ms. White,

The No Build alternative is the only sane course to take. The adverse effects the Tongue River Railroad would have on the narrow, fragile valley, where the 40.3 mile extension would cross the river five times, cannot be appropriately mitigated.

Sincerely,

Irv Alderson

Irv Alderson

NANCE CATTLE COMPANY

BIRNEY, MONTANA 59012

May 4, 1994

Ms. Dana White
Section of Environmental Analysis
Room 3214
Interstate Commerce Commission
Washington, DC 20423

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

Dear Ms White:

I own and operate the Nance Cattle Company located on the proposed Tongue River Railroad extension alignment and within the Montco life-of-mine area. I have reviewed the Commission's Supplemental Draft Environmental Impact Statement and agree with the Commission's preference for the Tongue River Railroad's proposed route versus the Four Mile Alternative.

Having been raised in this area, I am very familiar with the terrain and steep grades which the alternative route would have to traverse, plus the additional mileage it involves. The other possible alignments which were reviewed would have similar or worse grades and lengths as the Four Mile alternative, all of which would be just as inefficient as the current BN line up to Sheridan from Decker, over Parkman Hill and on to Huntley before turning east to Miles City.

I believe it is questionable to call the no-build alternative environmentally neutral. The no-build alternative would maintain an inefficient mode of transportation, inhibiting the movement of environmentally preferable compliance coal to utilities faced with the problem of meeting clean air standards. As shipment levels would increase on the no-build alternative or BN line, fuel emissions and inefficiencies will also increase.

With regard to bridge crossings of the Tongue River, it is very evident that similar structures are used every day on highway, interstate, pipeline and railroad systems across the nation with no apparent effect on streams. While it's true the Tongue River Reservoir is a popular recreation area for local residents, it can hardly be considered as pristine or even remote. More appropriately, the area has a high level of industrial activity, including surface coal mining and railroad traffic.

While mitigation of cultural impacts to our neighbors to the west, the Northern Cheyenne, may be necessary, its also important to consider the high level of unemployment which exists there today. The Northern Cheyenne have always been

fractionalized between traditional interests and those who recognize the importance of economic opportunity and jobs. The Northern Cheyenne have substantial reserves of compliance coal on the reservation, coal which could be served by the TRR, creating employment opportunities for tribal members.

The future of Montana's, and especially Rosebud County's, coal industry lies in the development and utilization of the low-sulfur, compliance coal from this area. The Tongue River Railroad is an essential ingredient for realizing this future and I urge the Commission's approval of the proposed alignment.

Sincerely,

Jay T. Nance

NANCE CATTLE COMPANY

BIRNEY, MONTANA 59012

May 4, 1994

Dana White
Section of Environmental Analysis
Room 3214
Interstate Commerce Commission
Washington, DC 20423

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

Dear Ms. White:

I own and operate the Nance Cattle Company with my son. The ranch extends east of the Tongue River and is crossed by the Tongue River Railroad alignment and lies in the Montco mine area. We leased surface and coal rights to the mining company in the mid-1970's and have followed development of the mine and railroad closely for many years.

I agree with the ICC's recommendation of the TRR's proposed route. The length and grades of the proposed route are far more efficient than the Four Mile alternative and the existing Burlington Northern route.

I have been in ranching for over sixty years and have had to take into account, among other things, cattle prices, interest rates and weather conditions in making business decisions and have never made a decision on the grounds it was neutral or would have no impact on my operation. I would take exception to your suggestion that the no-build alternative is neutral. On the contrary, this alternative could very well have greater impacts from the view of lost opportunity, jobs, revenues and continuing an inefficient transportation system, which creates greater environmental impacts from higher levels of fuel emissions and greater distances traveled.

While it's true that we stand to gain some from our surface and coal leases, I believe there is a more critical issue that must be considered. With passage of the 1990 Clean Air Amendments, a shift in coal production is taking place as utilities seek new sources of compliance coal. From what I have seen, contracts for non-compliance coal expiring in the Colstrip area will continue to move to mines capable of producing compliance coal. These contracts could all move to Wyoming mines, even without the Tongue River Railroad, thus eliminating important jobs and revenues for our state.

The Tongue River Railroad provides an opportunity for Decker area mines and new mines, such as Montco, to play an important part in the expanding compliance coal market by creating significant transportation savings and service to new Montana sources of compliance coal. I have seen detailed plan and profile maps

for the TRR's proposed alignment and as a rancher believe it will have little effect on hay producing areas along the Tongue River.

Again, I support the ICC's recommendation of Tongue River Railroad's proposed route and urge the Commission's approval of this application.

Sincerely,

Marcus L. Mance

Marcus L. Mance

April 23, 1994

Musgrave Ranch
P O Box 32
Decker, Montana 59025

Dana White
Section of Environmental Analysis
Room 3214
Interstate Commerce Commission
Washington, DC 20423

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

Comments on the Supplement to the DEIS

We are landowners and residents along TRRC's proposed route from Ashland to Decker, Montana. Our livelihood is raising cattle on this land.

The first issue we will address is the Section of *Environmental* Analysis's (SEA) decision that the TRRC's proposed route is now *environmentally* preferred to the Four Mile Route.

The statement on page 5 of the Supplemental DEIS by SEA states that, "If SEA found that it could not be safely operated, then SEA could no longer recommend the Four Mile Creek Alternative as the *environmentally* preferable route if the Commission decided to approve this project." We agree that safety is important, but is safety an *environmental* concern? Should safety have been a determining factor in the SEA conclusion that TRRC's preferred alignment is also *environmentally* preferred? Don't the statements on pages 6 and 7 saying that, "There are design [illegible] operating options available to TRRC that would mitigate potential safety problems" take care of the safety issue?

We will also refute other *environmental* concerns as addressed in Chapter 3 pages 10-12.

(a) This statement says, "The land disturbance resulting from the excavation required on the Four Mile Creek Alternative would significantly alter and scar the area and would change the natural land configuration for the duration the existence of the right-of-way." Can't the same thing be said for TRRC's preferred route? Won't a tunnel, many fills and cuts, and five bridges significantly alter and scar the area and change the natural land configuration along TRRC's preferred route?

(b) This statement addresses the cuts and fills and states, "...the Four Mile Creek Alternative would have a potential for erosion and soil loss within the Four Mile Creek Drainage that would be equal to or greater than the potential soil loss that would be associated with TRRC's proposed alignment." We certainly agree with that statement but ask, why is it better to have erosion and soil loss along the TRRC's proposed route than along the Four Mile route?

(c) and (d) These statements refer to the deforestation that would occur along the Four Mile route which would adversely affect the habitat of big game species and breeding bird populations. Why would it be better to destroy the wildlife habitats along TRRC's proposed route? Why would it be better to impact aquatic resources and riparian zones along TRRC's proposed route? Why would it be better to compromise the integrity of the Tongue River and its scenic and recreational values? In reference to the attached article in The Billings Gazette, published in Billings, Montana, (April 20, 1994), we agree with American Rivers, a North American river conservation organization, when they say that development of the railroad would "ruin the valley as it exists today." Tongue River has been named as one of its 20 threatened rivers. "Mike Gustafson, president of Wesco Resources in Billings, one of the railroad developers, said American Rivers would paint the image that the railroad will run right down the middle of the river bottom land. Not true, he said. The railroad would parallel the county road and be out of the flood plain and alluvium." All you need to do is look at Appendices A-1 and A-2 of the Supplemental DEIS to see that the railroad does indeed run right down the middle of the river bottom land in many places. The valley is too narrow for it to go anywhere else. How can the railroad both stay away from the river and cross it five times in less than eight miles?

(e) This statement maintains that the Four Mile Alternative would be closer to residences and cross residential access roads. Why does it have to do that? If TRRC can alter their proposed route "...to avoid conflicts with the Tongue River Reservoir State Recreation Area and the Big Horn County Maintenance Facilities" as well as "...to avoid fishing access, private cabins and the main recreational access road along the west side of the Reservoir", (p. 15 footnote, Supplemental DEIS), why can't they also alter the Four Mile route to avoid residences and residential access roads? Has TRRC really adequately tried to make the Four Mile Alternative work or have they biased their reports to the ICC to make their preferred route look more acceptable? Why do Appendices A-1 and A-2 not show the county roads the route of the proposed TRRC extension follows? Why don't they show how many times the railroad will cross the county road along TRRC's proposed route? In addition, along TRRC's proposed alignment, they will not only cross Bernice Musgrave's access road, the route goes right through the living room of her residence. Isn't that closer than 900 feet away? Doesn't a significant error like that cast a shadow of doubt about the credibility of this entire Supplement to the DEIS prepared by SEA?

(f) This statement discusses the air pollution problem and suggests that, "The slower-moving trains on the Four Mile Creek Alternative would inhibit the dispersal of pollutants." What about the inversion area caused by the steep topography along TRRC's proposed route? As we have stated in previous comments, we are right now impacted with the pollution caused by the coal mines and railroads five air miles away.

The above statement concludes with the larger amount of fuel that would be required to operate along the Four Mile route. The economic complaints continue on page 4 in that TRRC calculated that, by comparison, the Four Mile route "...would cost an additional $8.5 million to construct and that the annual operating costs would be 34 percent per carload higher than its proposed route." We feel that, even though the SEA states on page 7 that cost was "...not a determining factor in our environmental analysis", they did take into consideration the economic benefits of one route over another. Wasn't their task to determine the *environmentally* preferrable route? It seems to us that economics and safety were given much more credence than the *environment*.

B-14

We will next address Chapter 4 which sketchily mentions adjustments to TRRC's proposed alignment. It is stated on page 15 that "...access to the dam could still be blocked during railroad construction" so a condition has been recommended by the SEA to be added to the proposed Mitigation Plan that "TRRC will provide 24-hour a day access..." Who will monitor TRRC to make sure this is done? The Montana Department of Resources and Conservation also voiced a concern about the blasting and drilling damage that could occur near the Tongue River Dam during construction. Is there any proof that the reconstruction of the spillway will make the dam any more able to withstand blasting and drilling? Where is the impact on the Dam from the vibrations from ten or more trains passing daily addressed? Concerns stated by the Montana Department of Fish, Wildlife and Parks (p.17) were not dealt with at all in this "adjustments" chapter. Does TRRC expect to mitigate those concerns? How and when? We have also asked many questions of the TRRC and are told that those things will be mitigated. Does TRRC know that everyone does not put a dollar value on things precious to them? Shouldn't these problems be solved before a permit is issued? Can the TRRC be dealt with on the basis of good faith considering their record to date?

It is also stated on page 5 that, "SEA and the Commission's experts undertook extensive site inspections of both TRRC's proposed alignment and the Four Mile Creek Alternative." The footnote adds, "Representatives from TRRC accompanied the Commission's Staff." Why were we, as landowners along TRRC's preferred route, not asked permission for these people to conduct "extensive site inspections" on our property? If trespassing on our land did not occur, how extensive could the site inspections have been from the county road or an airplane? Why were representatives of the TRRC allowed to participate, and we were not invited or even notified? Who better than we could tell these representatives about the environment of the area we live in? Wasn't this was a serious error on the part of the SEA and the Commission experts? We certainly have much more at stake in this project than the TRRC representatives. Economic greed does not stack up to love of the land. Who owns the property? Whose livelihood and lifestyle will be destroyed if the Commission decides to approve this project?

(p.4)

We are in receipt of a copy of a letter from Alan S Newell of Historical Research Associates, Inc. to Dana White of the ICC in response to her request concerning the working ranches that would be directly affected by the TRRC Extension. We don't question Mr. Newell's research but are afraid that his findings may be misinterpreted. As he shows in his Attachment A which we have included with this letter, there are few landowners that the railroad will cross. This is because it takes 50 to 60 acres of land to run one cow and calf for one year in this arid area so ranches have to be large. With cattle prices what they are, it takes at least 150 head just to minimally support a family of four. This, of course, depends on land and cattle debts. We would like to address the portion of the report that refers to us personally. The total acres that the TRRC would condemn so they could acquire the land from us to build the TRR is projected to be 56. This is only .47% of our total acreage. We agree that this sounds like very little compared to the approximate 12,000 acres we control. You might think we would hardly notice this half of a percent of our land being usurped. We assure you that we will notice the loss of 56 acres especially since it will be a strip of fenced right-of-way bisecting our ranch and cutting our pastures off from our water sources. If you would like to relate this loss to your own property, multiply .47% times whatever land you own. Convert this to a fenced path full length through the middle of your property. You don't have a choice where it goes because someone else decides that for the good of the company that is taking the land away from you. You can't get from one side of the fenced path to the other unless you go to a culvert crossing under the path every 3 or 4 city blocks or so. And then, to top it off, put a train on the path going by ten times in a 24 hour day, 365 days a year. Wouldn't you say, "No!"? So would we, if we had a choice.

Recently there was an article in The Sheridan Press published in Sheridan, Wyoming, (Tuesday, March 15, 1994, p.2), headlined with "Coal demand strains rail capacity." This article, a copy of which is attached to this letter, talks about how the increasing demand for coal from Wyoming's Powder River Basin is straining existing railroads. We feel it has been proven that this is the real reason why the TRRC wants to build this line from Decker to Ashland. What will this railroad do to the existing mines in Montana when Wyoming coal can be hauled more cheaply?

(p.5)

What about the railroad workers along the existing Burlington Northern route? It is pure economic greed and we - the residents along the route, the fragile ecosystem along the Tongue River, the Montana coal miners, the Burlington Northern railroaders and the economy of Montana - will be sacrificed. The reason they don't want the Four Mile Route is strictly because of cost. It has nothing at all to do with the environment. If TRRC officials were environmentalists, they would not even consider building the TRR. But they are not. They are businessmen who see a profit to be made at ours and the environment's expense.

We do not want you to misunderstand from our comments and questions above that we think the Four Mile Creek Alternative should be the preferred route. WE DO NOT! We are merely proving that if the Four Mile Route is not environmentally sound and that there are environmental issues which cannot be mitigated along that route, the same holds true for TRRC's preferred route through our ranch. We unequivocally support the **NO BUILD ALTERNATIVE** as the only logical and feasible decision.

Thank you for your consideration of our comments.

Sincerely,

Bill Musgrave

Bill Musgrave

Judy Musgrave

Judy Musgrave

Kyle Ann Compton

Kyle Ann Compton

(2 Attachments included)

(p.6)

Group says railroad plan threatens Tongue River

Billings Gazette 4/20/94

ATTACHMENT A.

Working Ranches	Footnote	Deeded	Leased	Estimate	Total	Total Acquired Acres	% of Right-of-Way Acquisition Acres
Musgrave	1.	7062	4900		11,962	56	0.4677144
Hosford	2.			18000	18,000	80	0.4444444
Carrel	3.	1500			1,500	34	2.2666666
Canyon Creek (McKinney)	4.			20000	20,000	112	0.5600000
Quarter Circle U	5.			25000	25,000	74	0.2960000
MonTaylor	6.			45000	45,000	32	0.0711111
Bones Brothers (Alderson)	7.	2500	8400		10,900	15	0.1376146
Brown Cattle & H Bar (Hayes)	8.	9160	24150		33,310	89	0.2671870
Nance Cattle	9.	3850	17820		21,670	24	0.1107522
Knobloch	10.	6830	12000		18,830	97	0.5151354
Consol (Ebeling)	11.			20000	20,000	25	0.1250000
Webster Enterprises	12.			20000	20,000	33	0.1650000
Gene Lee	13.			1700	1,700	34	1.9318181

Footnotes

1. Sheridan public hearing - 12,000 leased and deeded acres; ranch listing includes 7,062 deeded acres and 4,900 acres leased.
2. Estimate 16,000 to 20,000 acres; estimated 400 - 500 head of cattle.
3. Carrel indicated at Miles City hearing 100 head of livestock. Indications are that Carrel has additional leased acreage.
4. Estimated acreage. Nance, Brown and McKinney share 32,000 acre Forest Service grazing allotment on 45% (500hd), 46% (530hd) and 9% (100hd) basis, respectively.
5. Estimated acreage, deeded and leased combined approximately 25,000 acres.
6. Estimated acreage 40,000 to 50,000 acres.
7. Estimated deeded acreage 2,000 to 3,000 acres and Forest Service allotment estimated at 300 head. Basis 300 head @ 28 acres/head.
8. Deeded acreage is actual. Forest Service grazing allotment 530 head (46%) of 32,000 acre tract, plus some state, fee and federal lands leased.
9. Deeded acreage is actual. Forest Service grazing allotment 500 head (45%) of 32,000 acre tract, plus some state, fee and federal lands leased.
10. Deeded acreage is actual from surface lease document. Leased acreage estimated at 10,000 acre Forest Service grazing allotment, plus some state and federal lands.
11. Estimated acreage 15,000 to 25,000 acres deeded and leased.
12. Estimated acreage 20,000 acres deeded and leased.
13. Estimated fee acreage 1,700 acres, source property maps.

Coal demand strains rail capacity

Sheridan Press 9/15/94

American Rivers

May 9, 1994

BY FAX 927-6225

Dana White
Section of Environmental Analysis, Room 3214
Interstate Commerce Commission
Washington, D.C. 20423

Re: Supplement, Draft Environmental Statement
Finance Docket No. 30186 (Sub. No. 2)
Tongue River Railroad Company — Proposed Extension

Dear Ms. White:

American Rivers, Inc. is a national, public interest not-for-profit corporation with more than 15,000 members nationwide. American Rivers is the only national conservation organization dedicated exclusively to the protection and restoration of the nation's rivers. In its twenty-year history, American Rivers has worked intensively to protect rivers under the federal Wild and Scenic Rivers Act and has actively assisted states and local groups with their river conservation efforts. American Rivers members live near, use and benefit from the resources of the Tongue River.

American Rivers also conducts extensive public education programs, including an annual listing of America's Ten Most Endangered and Twenty Most Threatened Rivers. On April 19, American Rivers included the Tongue River in the list of Threatened Rivers because of the potential environmental impacts of the proposed Tongue River Railroad.

General Comments

The Supplement to the Draft Environmental Impact Statement ("SDEIS") is a completely inadequate document, a quality it shares with the Draft Environmental Impact Statement ("DEIS") released by the I.C.C. in 1992. Both documents fail to provide information necessary for the Commission to make an informed judgment on the impacts to the human environment that will result from the proposed project. The meager analysis of the project's impacts upon the Tongue River's aquatic and riparian environment presents a glaring analysis gap that the Tongue River Railroad Company ("TRRC") threatens, quite literally, to drive a railroad through.

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Ms. Dana White
May 9, 1994
Page 2

The proposed 131-mile Tongue River Railroad would run parallel to the river from Miles City to Decker. It would cross the river six times, and 18 trains of coal would be carried on the rails each day. Even the promoter of the railroad concedes that train derailments are simply a matter of time.

There is currently one permitted, but not operational, strip mine near the river. We understand that four other strip mines have been proposed for the area. The specter of strip mine coal development has created concern among residents and friends of the Tongue River, however, the I.C.C. has failed to consider the relationship of the proposed railroad to future coal development in the region.

Substantial issues have been raised, and we are confident will be fully addressed in comments submitted by other reviewers, that the SDEIS represents a continued refusal by I.C.C. staff to fully consider the environmental, economic and social impacts of the proposed project, particularly as they will be experienced by landowners in the vicinity of the project area and the Northern Cheyenne tribe.

American Rivers supports strongly the "No action" alternative. The other alternatives considered, including the proposed "Four Mile Creek" alternative, all threaten unnecessary degradation of the Tongue River and its resources.

Wetlands and Riparian Issues

Generally speaking, the existing wetlands analysis has been hopelessly inadequate. The SDEIS and DEIS contain scant analysis of the environmental effects of 5 railroad crossings and river bank channelization required by the proposed project. Among other things, the requirement to evaluate "feasible alternatives" contained in the Army Corps of Engineers section 404(b)(1) regulations should be an integral part of the Commission's decision to select a particular alternative.

The preferred alternative will have a far greater impact upon the riparian and wetland resources of the Tongue River than the Four Mile Creek alternative or the "no action" alternative. Yet, the SDEIS fails to meaningfully address the environmental effects of such riparian and wetlands loss.

American Rivers is particularly concerned that the SDEIS does not adequately address the concerns raised by the Corps of Engineers in its September 29, 1992 letter on the DEIS. The Corps stated, inter alia:

Ms. Dana White
May 9, 1994
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> ... it would be difficult to justify a decision to issue a permit for the Tongue River Railroad Company's preferred rout, if the Four Mile Alternative is determined to be a practical alternative. While not impossible, it is unlikely that an alternative which will impact four additional wetland locations, requires fifty five additional intermittent stream crossings, and results in four additional river crossings, would have fewer adverse environmental impacts.

The Corps letter also suggested that the Final EIS include a section 404(b)(1) evaluation of required dredge and fill operations. Such an analysis has not been included in the SDEIS.

Given the apparent unfamiliarity of the I.C.C. staff with the nation's wetlands laws, American Rivers suggests that the Corps be brought into the EIS process as a cooperating agency to ensure that wetlands issues are properly considered.

Comparison of Alternatives

The SDEIS fails to provide a credible comparison of the environmental effects of the different alternatives, including the "No action" alternative. The I.C.C. staff's representation that "The 'no action' alternative would be environmentally neutral," SDEIS at 21, is contrary to fact. The environmental and human environment of the Tongue River will not be threatened by significant degradation if the "No action" alternative is chosen.

The SDEIS includes an identification of alternate routes available to TRRC, SDEIS at 18-20, however, there is no environmental analysis of the alternatives, apparently because they do not meet the proponent's "engineering and operational criteria for safe operations." While safety is obviously an important element of the Commission's decision of which alternative to select, the staff should not abdicate its responsibility to the Commission and the public to evaluate independently critaria proposed by TRRC, including the environmental effects of such alternatives. To date, the staff's failure to conduct such an independent evaluation of such engineering and operational criteria significantly undercuts the value of the SDEIS and DEIS.

Cumulative Impacts and Related Actions Analysis

The SDEIS and DEIS completely fail to present information concerning the cumulative impacts of additional coal development in the project area that would be feasible with the construction of the proposed project. The Environmental Protection Agency raised this issue in its September 16, 1992 letter on the DEIS, however, it has yet to be fully addressed by the I.C.C. staff.

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American Rivers is particularly concerned that the apparent abdication of any such consideration to a separate environmental review will result in a "segmented analysis" of the project, in violation of the Council of Environmental Quality NEPA regulations. (14)

Need for the Project

American Rivers is concerned that the existing environmental analysis of the proposed project has yet to make a compelling case that there is even a need for this project. We understand that the existing transportation infrastructure provides opportunities to transport coal throughout the region.

We understand that the Tongue River Railroad Company may benefit from the railroad development, however, it has not been demonstrated that the economic benefits that will accrue to the corporation justify the environmental degradation it will require along the Tongue River. (15)

Wildlife Values

The analysis of the effects on wildlife set forth in the SDEIS is completely inadequate. The SDEIS does state that the Four Mile Creek alternative would require greater deforestation of ponderosa pine / juniper habitat than the preferred alternative, however, there is no discussion on the presumably far greater impact to the cottonwood / riparian habitat resulting from the preferred alternative. Nor does the SDEIS provide any analysis of the effects the preferred alternative will have upon wildlife populations in the Tongue River valley.

American Rivers understands and expects that other groups will comment on the inadequate data base relied upon by the I.C.C. staff. For the Commission to fully understand the effects of the proposed project, it should require the staff to develop current data on the wildlife populations in the Tongue River valley and the effects of the proposed project. (16)

Consideration of the Tongue River as a Potential Wild and Scenic River

Section 5(d) of the Wild and Scenic Rivers Act, 16 U.S.C. section 1271 et seq., requires all federal agencies to consider potential national wild, scenic and recreational river areas in all planning for the use and development of water and related land resources. 16 U.S.C. section 1276(d). The planning responsibility imposed by section 5(d) requires the I.C.C. to assess the value of the Tongue River as a potential Wild and Scenic River during its planning for (17)

Ms. Dana White
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the proposed project development along the Tongue River and its related land resources.

To date, the Forest Service, Bureau of Land Management, National Park Service, Fish and Wildlife Service and Bureau of Land Management have each recognized their river planning responsibilities pursuant to 16 U.S.C. section 1276(d). American Rivers suggests that the I.C.C. contract with the Forest Service, BLM or NPS to conduct a study of the Tongue as a potential wild and scenic river as part of its environmental review.

Conclusion

For the reasons stated above, American Rivers believes that the SDEIS and DEIS fail to provide the Commission adequate information to make an informed judgment on the impacts to the Tongue River and its environment.

American Rivers believes that the "No action" alternative will remain the preferable choice to protect the significant resource values of the Tongue River and the communities that depend upon it. The mere fact that the Tongue River Railroad Company would benefit from this proposal should not compel the Commission to permit the degradation of the remarkable Tongue River.

Sincerely,

Thomas B. Cassidy, Jr.
Vice President for Conservation Programs
General Counsel

Original Mailed

cc: Senator Max Baucus
Senator Conrad Burns
Senator Ernest Hollings, Chair
Commerce, Science, and Transportation Committee
Senator John Danforth, Ranking Minority Member
Commerce, Science, and Transportation Committee
Congressman Pat Williams
Congressman Norman Mineta, Chair
Public Works and Transportation Committee
Congressman Bud Shuster, Ranking Minority Member
Public Works and Transportation Committee
(continued on next page)

Ms. Dana White
May 9, 1994
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cc (continued):
Ada Deer, Assistant Secretary for Indian Affairs,
Department of Interior
Katie McGinty, Director,
Office on Environmental Policy
Teresa Erickson, Northern Plains Resource Council

NATIVE ACTION
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(406) 477-6517
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May 6, 1994

Ms. Dana White
Interstate Commerce Commission
Section of Environmental Analysis (not)
Room 3214
Washington, DC 20423

Re: Comments of Native Action to the Supplement to the Draft Environmental Impact Statement for the Tongue River Railroad Extension Finance Docket No. 30186 (Sub. No. 2) (SDEIS)

Dear Dana White,

Native Action is non-profit community empowerment organization located on the Northern Cheyenne Indian Reservation in southeastern Montana. Native Action is encouraging the Interstate Commerce Commission to support the "no action" alternative regarding the Tongue River Railroad Extension Finance Docket No. 30186 (Sub. No. 2)

The environmental, social, economic and cultural impacts to the Northern Cheyenne people from the construction of the Tongue River Railroad (TRR) will be devastating. The Birney Village, which is located across the Tongue River from the proposed railroad, is one of the most traditional and most isolated villages on the Northern Cheyenne Indian Reservation. This village will be irreparably impacted by the construction of the Tongue River Railroad Extension. There have been numerous individuals from the Northern Cheyenne Tribe who have testified and submitted written testimony at the various hearings held in our area regarding the Environmental Impact process for this railroad. The public testimony from the Northern Cheyenne people has been overwhelming opposed to this railroad. The SDEIS is in error on Page 2 when it stated that public hearing comments were "mixed". Nobody spoke in favor of TRR at the Lame Deer hearing.

This area of southeastern Montana, known as the Tongue River Valley, is one of the last pristine areas remaining in this region. The Northern Cheyenne people, particularly the Birney Village, depend and rely on the environmental sanctity of this

A non profit organization located on the Northern Cheyenne Indian Reservation dedicated to mutual self-sufficiency

area for their daily way of life. The quiet solitude of this area is a necessary component of the traditional cultural way of life which prevails in the Birney Village. The water quality in the Tongue River is also an integral component of the Cheyenne way of life. Indeed, the Cheyenne people believe that the river embodies water spirits that must be protected from any degradation or harmful noise and pollution. The Tongue River Railroad, including the preferred route, will all jeopardize the cultural and religious sanctity of this region.

The record is very clear that there is no mitigation plan worked out in consultation with the Northern Cheyenne people addressing the potential irreparable impacts from the Tongue River Railroad. At the very least, the Interstate Commerce Commission should mandate that a thorough analysis be conducted as to the environmental, social, cultural, and economic impacts from the proposed Tongue River Railroad extension to the Northern Cheyenne people. This is and should be a basic prerequisite to any further analysis of this issue.

We are somewhat confused as to the process by which the Interstate Commerce Commission has now retracted from its initial decision in order to now support the applicant's preferred route. The SDEIS does not thoroughly explain the rationale by which the ICC came to this conclusion. It is also clear that no substantive contact and discussion was made with the Northern Cheyenne Tribal members or the Northern Cheyenne Tribal Government prior to the release of the SDEIS. The Northern Cheyenne Tribe is a government in every sense of that definition and as such the Interstate Commerce Commission clearly has a federal trust responsibility to ensure that the tribe's interests are not jeopardized. This trust relationship between federal agencies and Indian tribes has not been respected throughout these ICC proceedings. To cure this substantive defect, the Interstate Commerce Commission should mandate that additional analysis on the impact to the Northern Cheyenne Tribe from the Tongue River Railroad Extension be immediately assessed and with full participation of the Northern Cheyenne Tribe.

The Northern Cheyenne people have testified as to their concern regarding impacts to their religion, culture, environment, and burial sites. The area along the Tongue River is an area which still has tremendous cultural and religious significance to the Northern Cheyenne people. Indeed, the Northern Cheyenne people have testified that the proposed construction of the Tongue River Railroad Extension will impact the sacred religious and burial sites of this area. In pre-Reservation times, the Northern Cheyenne people lived on the eastern side of the Tongue River, directly in the proposed path of the Tongue River Railroad, and many have ancestors buried in this area. The river and land around this area is utilized for medicinal gatherings, religious ceremonials, and is an integral component of the cultural way of life for the Cheyenne people. These are all jeopardized by the TRR extension, including the preferred route.

Safety factors are a paramount concern to individuals living in the Birney Village. Derailment is a major safety and environmental concern because of the environmental impact to the water spirits in the Tongue River. The five bridges and tunnel are also a tremendous concern because of the safety factors of a village of people living in the area that will have to be commuting across these bridges on a daily basis.

The noise and aesthetic impacts cause by the building of these bridges and tunnel have not been adequately ascertained, nor are there mitigation plans included in the SDEIS. The noise, pollution, and vibrations from the railroad travelling directly adjacent to the village of Birney will have devastating impacts to the spiritual tranquility of this area. It is a very serious matter to consider when one understands that the Birney Village is comprised of the most traditional cultural leaders in the Northern Cheyenne Tribe. These issues must be seriously evaluated and assessed by the ICC, with the full participation of the residents of the Birney Village and the Northern Cheyenne Tribe. Identification of mitigation measures must be specified, along with their costs and whether or not the Tongue River Railroad Company has the finances to protect the area in the manner in which the residents of the Birney Village require to preserve their traditional Cheyenne way of life.

The SDEIS often refers to "extensive site visits in the area." However, there are no individuals in the Birney Village who have been interviewed or been consulted as part of the extensive site visits referred to in the SDEIS. The Northern Cheyenne Tribal Government has not entered into nor been involved in developing a mitigation plan either. We are requesting clarification from the Interstate Commerce Commission as to who was interviewed in these extensive site visits because we believe the information relied upon in the SDEIS is woefully inadequate.

Native Action staff and board are members of the Northern Cheyenne Tribe and we are active in community organizing and empowerment work on the Northern Cheyenne Indian Reservation since 1984. Recently, the Northern Cheyenne Tribe entered into a water rights compact with the State of Montana that included two pieces of land on the west side of the Tongue River Reservoir, which the railroad would have crossed. The SDEIS appears to avoid crossing these pieces of recently acquired Northern Cheyenne land. Our question to the Interstate Commerce Commission at this point is whether or not the SDEIS was issued primarily to avoid the increased scrutiny which the Northern Cheyenne people would demand by the railroad physically crossing Cheyenne lands.

It appears that the Interstate Commerce Commission is working collaboratively with the owners of the Tongue River Railroad Company so as to avoid crossing Cheyenne lands, thereby preventing stricter analysis and potential tribal taxation of the Railroad. This maybe the real rationale for the issuance of the SDEIS, rather than the Interstate Commerce Commission's concerns for safety, disturbance and pollution.

Finally, there is no public need identified for the TRR extension. The Montco Mine has never materialized. Existing mines at Decker and Spring Creek have rail service now. The TRR extension is simply a means to provide a shortcut and to make the owners wealthy. Balance this with the tremendous community response against the TRR because of the environmental, cultural, social and economic costs and the ICC should determine that the "no action" alternative is preferable. We encourage you to deny this new route alternative and mandate the "no action alternative".

Sincerely,

Gail Small

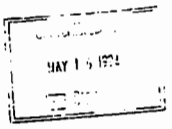
Gail Small,
Executive Director

GS/lh

Natural Resources Defense Council

May 11, 1994

Dana White
Section of Environmental Analysis
Interstate Commerce Commission
Room 3214
Washington, D.C. 20423



Re: Finance Docket 30186 (Sub No. 2)

Dear Ms. White:

I am writing on behalf of the Natural Resources Defense Council, Inc. (NRDC), a national environmental membership organization, regarding the above-captioned docket item and specifically the supplement to the draft environmental impact statement (DEIS) for the Tongue River Railroad (TRR) extension. For more than 20 years, NRDC has worked with various western groups, including the Northern Plains Resource Council, on issues relating to federal coal leasing and development. As discussed in greater detail below, we object to both of the alternative TRR routes under consideration and to many of the claims and assertions contained in the supplement.

We support the "no action" alternative. Since all of Montana's coal mines have rail service, there is no need for the proposed railroad. In addition, the "no action" alternative is clearly the safest option, and safety, according to the supplement, is the ICC's overriding concern. Moreover, the "no action" alternative will avoid all of the other impacts of constructing and operating a railroad, impacts which are essentially unmitigable and which include loss of jobs, adverse effects on local land owners and businesses, serious impacts to traditional Native American sites and negative consequences to Montana's coal industry.

In addition to objecting to both of the alternative routes under consideration, we question the ICC's complete turn-around on which of them it prefers. Originally, in the DEIS, the ICC's preferred route was the Four Mile Creek Alternative, which avoided the most sensitive part of the river, not TRR's preferred route with its five bridges,

Thank you in advance for considering our comments.

Sincerely,

Johanna H. Wald
Senior Attorney

cc: Tom Ebiery
Westco Resources
1300 Poly Drive
Billings, MT
59102

Northern Plains Resource Council

May 9, 1994

Dana White
Interstate Commerce Commission
Section of Environmental Analysis
Room 3214
Washington, DC 20423
Fax: (202) 927-6225

Re: Comments of the Northern Plains Resource Council to the Supplement to the Draft Environmental Impact Statement for the Tongue River Railroad Extension Finance Docket No. 30186 (Sub. No. 2)

Dear Ms. White:

Following are comments on the Supplemental Draft Environmental Impact Statement (SDEIS) concerning the above-referenced docket submitted on behalf of the Northern Plains Resource Council (NPRC). On May 5, 1994, Teresa Erickson spoke with Elaine Kaiser, and was told these comments would be accepted if postmarked on May 9, 1994. Thus, we are submitting these comments in a timely fashion by the May 9, 1994 deadline.

NPRC believes the SDEIS is inadequate. NPRC also contends the ICC should have taken this opportunity, presented by the SDEIS, to expand the inadequate analysis of impacts set forth in the July 17, 1992, Draft Environmental Impact Statement (DEIS), rather than attempt to justify the Section of Environmental Analysis' change in position stemming from off-the-record lobbying by the Tongue River Railroad Company (TRRC) and its agents.

The refusal on the part of the ICC to conduct additional analysis on the environmental, economic, and social impacts of the proposed extension erodes public confidence that the ICC intends to

do anything except rubber stamp the TRRC application. This lack of confidence is further bolstered by the ICC's willingness to do an SDEIS based on off-the-record meetings with TRRC and its agents. The NPRC renews its previous request that the ICC conduct further environmental and socio-economic analysis of the proposed TRRC rail line. Enclosed as Exhibit A, incorporated by this reference, is a memorandum which demonstrates the ICC must conduct another Supplemental DEIS to present additional environmental, social and economic information and analysis to the public for review and consideration under the procedures established by the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq.

SEA - TRRC Communications and Information Sharing

The SDEIS mentions extensive meetings between the ICC SEA staff and TRRC personnel. NPRC is disappointed the SEA did not attempt to contact ranchers directly impacted by the proposed rail line, the Northern Cheyenne Tribe, Chambers of Commerce or local governments nor coal miners and railroad workers who could lose jobs as a result of the proposed line. Instead, SEA scheduled meetings with TRRC and appears to have been lobbied into changing its position. After two years of extensive comment and investigation, NPRC submits these additional comments despite significant questions regarding the fairness of the ICC staff to consider our, or any comments other than the applicants. Why did SEA fail to contact NPRC, ranchers, the Northern Cheyenne Tribe,

coal miners or railroad workers in preparation of the SDEIS and consideration of alternative routes?

NPRC understands SEA has relied extensively on information prepared by Historical Research Associates (HRA). TRRC's hired consultant in changing its position regarding the preferred alternative. Please identify with specificity all information provided by HRA, and communications between SEA and HRA or TRRC, which formed the basis of SEA's changed position or provided supporting documentation for the SDEIS. Also, please identify by date, time, name and title, all of the persons involved, and the subject of each and every contact any member of the ICC, and/or the SEA has had with TRRC and/or HRA after publication of the DEIS with regard to the Four Mile Creek and other alternatives.

Proposed Route Alternatives

NPRC supports the "no action" alternative. Despite the fact that the SDEIS presented virtually no additional environmental data, the SEA changed its earlier opposition the Four Mile Creek alternative, and is now supporting TRRC's preferred route (hereinafter, the river route). The reasons given for changing the SEA's opinion as presented in the DEIS deal with safety, soil disturbance and pollution. No information demonstrating any analysis of fish, wildlife, or riparian systems along the river route appears in the SDEIS.

NPRC contends that unsafe conditions, disturbance and

pollution will also occur on the river route. The only alternative which truly avoids these problems is the "no action" alternative. Because the ICC appears to not have conducted any wildlife or vegetation studies on any of the proposed alternatives, it seems logical that any conclusions on which route is environmentally preferable are, at best, incomplete.

With regard to the safety issue, the only acceptable alternative is the "no action" alternative. Livestock loss and fires are other important aspects of safety to be considered. These will occur in the event TRRC obtains ICC approval to construct the railroad extension. Derailments will also occur regardless of the route. Is it safer for a train to derail while traveling 40-50 miles per hour, the speed of trains on the river route, as opposed to 10 miles per hour on the 4-Mile route. What safety factors besides derailments justify the change in routes?

NPRC believes that if the ICC is truly interested in safety considerations, the proposed railroad must be constructed to withstand a maximum precipitation event. Instead the DEIS only calls for 25 year flood measures. Please explain why the TRRC is not required to meet maximum precipitation event safety standards, detail the costs of designing the railroad to meet such requirements, and define the potential adverse health and safety consequences of only designing the railroad for 25-year events.

The SEA has neglected the very obvious fact that five bridges and a tunnel will create significant safety problems and

disturbances. The SDEIS focuses on the selected example of "ponderosa pine/juniper habitat" to compare the Four Mile Creek and river alternatives. The figures for how many cubic yards of dirt need to be moved may not be as impressive for the river route. In order to truly assess alternatives, the ICC must identify the specific aquatic and terrestrial populations which would actually be impacted under each alternative. What are the ICC's specific plans to mitigate the aesthetic impact caused by the building of the bridges and tunnel?

Item E on page 11 is misleading. In an area such as the Tongue River which has no industrial development, even if there is substantial distance from the railroad to residences, residents will be able to hear the railroad, smell it, feel it and see it regardless of whether it's 100 feet, 150 feet or 900 feet from their homes. Testimony at the August 1992 hearings indicated that lack of wind enables residents near the Tongue River Reservoir (the river route) to hear the Decker coal mine 10 miles away. A train 150 or 900 feet from a home will have significant impacts. What is the ICC's rationale for selecting the limited distance criteria? Is there a national standard for how near a residence the railroad can be located? The ICC has not adequately addressed the noise and vibration impacts on residences at varying distances from the proposed railroad. This analysis should be presented. What impacts associated with the railroad are different at 900 feet as compared to 100 feet? What impacts would be avoided if the

railroad was built even farther away from residences? What impacts would be avoided to residents if the railroad wasn't built at all?

Item F on page 11 dealing with pollution caused by the burning of more diesel fuel, and claims impacts will occur on the Four Mile Creek route. NPRC believes this claim is simplistic, inaccurate and cannot be supported. The Tongue River Valley is prone to inversions and the fact that trains are moving faster does not mean pollution will disperse. Please identify the seasonal wind direction, speeds, flow patterns and dispersal characteristics for each alternative. Please provide detailed modeling to demonstrate the actual dispersal of diesel fumes for each alternative route.

Residents of both the river route and the 4-Mile route can smell diesel fumes from the Decker coal mine 10 miles away. The SEA has addressed only diesel exhaust as pollution. It fails to address coal dust pollution which will occur regardless of which route is used, and will likely be more prevalent on the river route where trains will be traveling faster. Noise and aesthetic pollution are also important. The logical decision where pollution is concerned is the "no action" alternative. Has the SEA or the TRRC done any modeling that supports the air pollution assertions in Item F? What are comparative figures with regards to coal dust pollution from trains traveling at higher speeds? What justification can the SEA present which shows a train traveling 40 to 50 miles per hour is safer than one traveling at 10 miles per hour?

The SEA refused to prepare a supplemental DEIS based on NPRC's and others' requests to consider the socio-economic impacts of the proposed rail routes on the coal and railroad industry in Montana and Wyoming. However, the SEA admitted it considered the cost to TRRC of operating on the four Mile Creek alternative (SDEIS p.7). Thus, the SEA has elected to consider economic impacts on the project applicant, but refused to consider the environmental and socio-economic impacts of the project on the Montana coal industry and all of Montana taxpayers, whether coal mines or others. Please respond to each and every point raised in the J. Duffield and C. Meher January, 1994, report on "The Tongue River Railroad Extension and the Marketability of Montana Coal," attached as Exhibit B and incorporated by this reference.

NPRC can not help but wonder if the SEA is inconsistent in its consideration of facts. The SEA staunchly refused to address the economic issues our membership is concerned about, yet, devotes ample discussion in the SDEIS to the economics of the proposed alternatives. The TRRC has publicly stated if it has to operate on the 4-Mile route, its project may not be economically feasible. Are the poor economics (as far as the TRRC is concerned) of the 4-Mile route the major factor in the SEA changing its "environmentally" preferable route. If the SEA is truly an "environmental analysis" body, the discussion on the economics of the proposed alternatives is inappropriate in this document. Instead, the TRRC and SEA should devote their analysis to how much

environmental mitigation measures will cost and whether or not TRRC has the finances to protect the area. If they don't, then no route is going to work.

NPRC strenuously objects to the phrase on page 21 which states, "The 'no action' alternative would be environmentally neutral." Neutral is a word that denotes something between the best and worst case scenarios. Obviously the best case, environmentally, for the Tongue River area is the "no action" alternative. We suggest this substitute for that phrase: "The 'no action' alternative is environmentally preferable to any of the 'build' alternatives." The "no action" alternative is the one most resoundingly supported in testimony and written comments. Yet, the SEA gives little attention to this alternative. The SEA seems unwilling to exercise this legitimate option and has not seriously, thoroughly or meaningfully considered or analyzed it.

In addition, the ICC must analyze two possible scenarios that could result from the no-build alternative. First, TRRC may continue not to pursue the previously approved 89- mile route, and not build this line. The second scenario the ICC must analyze in the no-build alternative is the possibility the TRRC actually does proceed to build the approved railroad. The ICC must identify how likely the TRRC would be to do so, and what the impacts would be of such construction. Please identify each and every right of way TRRC has obtained to build the 89-mile route. Please identify each necessary permit and/or license needed by TRRC for the 89-mile

route, and identify which of these permits/licenses have been obtained, and which of these have been denied, revoked or lapsed for failure to diligently develop the approved railroad. Why did the TRRC let the section 404 permits lapse on the original 89 miles of the railroad?

NPRC specifically requests the ICC to revoke its previous approval of the 89-mile route because there is obviously no public convenience and necessity warranting such approval, as evidenced by TRRC's failure to build this rail line. How long can this permit be held? The ICC should analyze the impact on real estate value, ranch development delays and other impacts resulting from the perception that there may be a railroad someday as long as the permit is valid.

Mitigation

The SDEIS presents a few proposed modifications to the proposed mitigation plans. SEA now takes the position the river route can be better mitigated than the four Mile Creek alternative. Please detail the exact sediment loading on the Tongue River and each tributary for each and every proposed alternative. Please identify each species of flora and fauna that could be impacted by the various alternative. For example, how will each alternative impact the Tongue River trout populations? What adequate mitigation plan will be implemented to protect each of these species, ranging from the various organisms in the Tongue River

benthic community to the bald eagles nesting along the river.

NPRC does not believe the SDEIS presents any evidence to justify the implication in the proposed mitigation condition stating that blasting charges could be designed to "ensure... no adverse affect on the integrity of the Tongue River Dam" (SDEIS, pgs. 16-17). Any charge detonated in the zone of the river alluvium could affect the integrity of the dam. Before supporting the river alternative, SEA should have the geo-technical information available so it can make a determination of potential impacts, rather than making unsupported assumptions based on a lack of geo-technical information.

Site Visits and Contact with Landowners

The SEA frequently refers to "extensive site visits" and "site inspections" in the SDEIS as part of the rationale for changing its position on the route. We are not aware of any land owners who were contacted for permission to be on their land during these site visits. This means: 1) the extensive site visits were done from a car on the county road, 2) the site inspections were done from an airplane, or 3) the inspectors/visitors trespassed while doing the site visits. Please identify each property the SEA staff, TRRC and HRA personnel were on during each visit. If, in fact, the site inspections were done without ever setting foot on private land, without thoroughly examining the river and its associated meadows and pastures, without investigating the nature of residential

occupation. Without viewing wildlife migrations, etc., then the additional investigation claim in the SDEIS appears to lack essential information.

Information obtained by NPRC through a Freedom of Information Act Request indicates the site visits were conducted by driving the road paralleling the Tongue River with occasional stops made to take pictures. Has the SEA obtained permission from any of the affected land owners to do site inspections of their property? If so, who? Exactly when and where were the "extensive site visits" done? Who participated in these visits? Why were none of the affected land owners asked to give input?

Adjustments to TRRC's Proposed Alignment

The Northern Cheyenne Tribe recently settled a long-standing federal reserve water rights compact with the state of Montana. As part of that settlement, the Tribe received two pieces of land on the west side of the Tongue River Reservoir which the railroad would have crossed. The DEIS should reflect the possibility that the TRRC adjusted its alignment so as to avoid crossing these pieces of Northern Cheyenne land, and thus avoid the increased level of scrutiny required by physically crossing Native American lands. Was this a factor in the realignment? If so, why was it not discussed in the SDEIS.

Alternative Alignments

NPRC appreciates the SEA finally identifying alternative routes in the SDEIS at pages 18-20. However, we are truly concerned at the lack of environmental review that was performed for each alternative. Please identify exactly what is, "TRRC's engineering and operational criteria for safe operations". How does this compare to the industry norm? What environmental concerns are contained in this criteria? Is total length the criteria the SEA is using to determine whether a route is environmentally preferable? SEA must conduct a detailed environmental review of each alternative in order to truly compare the potential impacts of each alternative. Please identify each and every plant, wildlife, cultural and other environmental survey or study conducted on each of the alternative. What impacts on water sources and availability will occur in each alternative? Whose ranches would be crossed? What cut and fill impacts would there be? Please identify the exact route alignment. How many acres of pine/juniper, riparian, sage and other plant communities will be impacted by each alternative. What wildlife species and populations will be impacted by each alternative?

Public Sentiment

Page 2 of the SDEIS states, "Generally, the oral statements made at the public hearings... were mixed. Comments at the Lame Deer and Forsyth, Montana and at the Sheridan Wyoming hearings generally opposed the proposed Extension. Comments at the Miles

City, Montana hearing generally favored the Extension."

It is deeply disturbing to have the SEA characterize public sentiment in this manner. Not a single individual at the August 1992 hearings in Lame Deer, Forsyth or Sheridan testified in support of the railroad. This is not what we would characterize as "mixed" or "generally opposed". The hearing in Miles City, however, was truly mixed, not "generally favored" as indicated in the SDEIS. Please identify each and every person testifying at each of these hearings, and document the claimed sentiment of such testimony.

This statement appears to disregard the level of public sentiment opposed to this project. Over 1000 verified statements were presented to the ICC in opposition to this project. Letters to the editor appearing in local newspapers have been unanimous in declaring opposition to this project. Combine that with the testimony at the public hearings and you will find that the vast majority of people in eastern Montana are opposed to the TRR. Enclosed as Exhibit C are copies of Montana and Wyoming newspaper articles and letters concerning public sentiment to the proposed railroad. For the SEA to characterize this as "mixed" and "generally opposed" reinforces our fear that the ICC gives little weight to public hearing testimony, DEIS comments and verified statements. Public sentiment would be more accurately characterized as overwhelmingly opposed to the TRR.

Wildlife

The SDEIS briefly mentions the impact of the Four Mile Creek alternative to wildlife and wildlife habitat. However, the SDEIS fails to juxtapose this against the impacts to wildlife on the river route. Even if one accepts the SEA's assertion that the 4-Mile route will require greater deforestation of ponderosa pine/juniper habitat, is that not preferable to erecting a barrier between wildlife and the primary source of water in the valley, i.e., the Tongue River?

Neither the DEIS nor the SDEIS references any original wildlife surveys for this project. They both depend on wildlife surveys done for different projects in different locations nearly a decade ago. In fact, the DEIS admits that 28 miles of the route were never surveyed for wildlife. This is information critical to an environmental recommendation and eventual permit decision. What original wildlife surveys were done for this project and what were the results? If no surveys were done, how can the SEA make a determination about which route is preferable, from a wildlife standpoint, without this information?

It is a well-known fact to Tongue River residents and state and federal wildlife officials that bald eagles are present on the Tongue River. Has anyone, the SEA or the TRRC, determined how many bald eagles are present on the river? How many nesting bald eagles are present and where are their nests located? What, besides avoiding eagles during the nesting season, does the TRRC plan to do

to minimize disturbances to bald eagles? Has the ICC investigated TRRC's plan on how they will avoid the eagles during construction? Is this plan feasible?

Wetlands & Riparian Habitat

The river route contains more riparian habitat and wetlands than does the 4-Mile route. It is obvious the railroad will have a significant impact on these areas. This runs contrary to this nation's policy of no net wetlands loss. What are the TRRC's plans to avoid wetlands on the river route? Even if avoided, what will the impact of the railroad to the wetlands be? What will be the impact to riparian habitat?

Please identify all of the wetlands that would be crossed by each alternative, and specifically describe and characterize each wetland community. What is the area of each type of wetland impacted or destroyed by each alternative? What plant and animal species and populations will be impacted, and what exactly will such impact be? How does this area of impacted wetlands along the river route compare to affected wetlands along the Four Mile Creek alternative? Has the TRRC acquired the necessary section 404 permits from the Army Corps of Engineers? Why did the TRRC let the section 404 permits lapse on the original 89 miles of the railroad?

Coal Leases

NPRC has learned that in the last two years a number of coal

leases in the Ashland area have not been renewed. Because this is a critical element of TRRC's claimed "need", as well as an element of the socio-economic and environmental impacts the ICC must address, please identify the total number of existing coal leases, and the number which have recently expired in the Tongue River and Otter Creek valleys. These are the leases which would provide the coal for TRRC's "other proposed coal mines" as described in the DEIS. Many of these leases were carried by the people who are also the principals behind the Tongue River Railroad. The non-renewal of these leases makes one wonder about the overly optimistic projections presented in the DEIS.

Does the ICC know which coal leases have not been renewed? How will these non-renewals affect the tonnage of Montana mined coal the TRRC is claiming it will haul? Has the TRRC provided any updated figures for mining in the Tongue River valley?

Tongue River Declared Threatened

American Rivers, a national river conservation organization, recently declared the Tongue River one of the nation's 20 most threatened rivers. This declaration was made after lengthy, investigative research on the part of this organization.

American Rivers shares NPRC's view that the "no action" alternative is the environmentally preferred route. The ICC must address this listing and respond to the publicly recognized threats by supporting the no-action alternative. Exhibit D is

documentation of this declaration.

Additional Specific SDEIS Comments

SDEIS Page 1: The SDEIS recognizes the proposed 89-mile rail line has not been built even though it was approved in 1986. Please explain why this line has not been constructed despite ICC approval. Please identify the impact on ranchers and the local community which have to live with the threat of railroad construction on their property or in their area, with no idea of when, or whether, construction and operation impacts would occur. When will the ICC withdraw approval of the 89-mile line?

SDEIS Page 2: The SDEIS acknowledges Fish and Wildlife Service comments that were not filed on the DEIS. The SDEIS also has extensive reference to meetings with TRRC concerning the company's preferred route. Please explain what criteria the SEA uses to determine what comments it elects to consider. Please identify all off-record comments the SEA used in making its decision to conduct the SDEIS, and which it will use to develop it Final Environmental Impact Statement.

SDEIS Page 3: Please explain the details of the alleged "detailed comparative site inspections of the Four Mile Creek Alternative and TRRC's proposed alignment," performed by SEA. Who was on these site inspections? Whose ranches were inspected? Please explain exactly how the SEA conducted a detailed site

inspection of the Tongue River canyon.

SDEIS Page 3: Page 3 states that "some" ranchers in the project area support the Four Mile Creek Alternative. NPRC believes the ICC is mischaracterizing the attitude of the local ranchers. Please identify the local ranchers SEA claims support the Four Mile Creek alternative and please document the nature of their support.

SDEIS Page 5: SEA acknowledges that "[i]f SEA found that it could not be safely operated, then SEA could no longer recommend the Four Mile Creek Alternative..." What criteria does SEA use to determine "safe operation"? If local residents, cattle, railroad workers and wildlife will be killed by trains operating on TRRC's preferred alignment, would that constitute "safe operations"? Would SEA support such a route? NPRC urges the ICC to deny the proposed route because the railroad cannot be operated in a sufficiently safe manner to protect local residents and the environment.

SDEIS Page 7: SEA admits to considering cost impacts on TRRC as a factor in its environmental analysis. Why does SEA refuse to consider the costs of shutting down Montana coal mines, and the job loss for coal miners and railroad workers in a Supplemental DEIS? Why has the SEA failed to consider the costs on each and every ranch crossed by the proposed railroad, and the impacts on these ranchers' operations? These costs must be addressed.

SDEIS Page 8: Please specifically identify the "further

analysis conducted by SEA after publication of the DEIS."

SDEIS Page 9: NPRC questions whether the "newly discovered" adverse impacts associated with the Four Mile Creek alternative are actually new. Since the TRRC's consultant, HRS assisted SEA in preparation of the DEIS, why wasn't all the information available at an earlier time? Did SEA actually publish the DEIS without knowing the impacts of the Four Mile Creek alternative on the pine/juniper plant community? Did SEA not know about the cut and fill caused by all the alternatives?

SDEIS Page 10: Please qualify and quantify each type of plant and animal community that would be impacted by cuts, fills and/or dredging in each alternative.

SDEIS Page 11: How would removal of pine/juniper acreage affect big game species and breeding bird populations? How would removal of riparian acreage affect plant and animal populations? Please respond to this question with specifity.

SDEIS Page 12: Please provide the modelling utilized to support SEA's claim that slower-moving trains on the Four Mile Creek alternative would inhibit the dispersal of pollutants.

SDEIS Page 15: Please produce WWC' supplementary hydrologic analysis which allegedly shows the bridges would have a minimal impact on homesite flood levels. What is "minimal"? Has SEA considered potential, as well as existing, homesites? What impact would occur from the flooding on agricultural operations? Has the SEA update its information on the location of residences? NPRC is

aware of at least one new dwelling on the river. How will it be impacted?

SDEIS Page 17: SEA states it will fully consider any comments and mitigation requested by Montana Fish Wildlife and Parks in the FEIS. Will the SEA extend this courtesy to any person commenting on the DEIS or FEIS? Will SEA respond to each and every question presented in comments to the DEIS and SDEIS?

SDEIS Page 18-19: NPRC believes that comprehensive environmental analysis of these, and other, alternatives must be conducted by SEA. Merely identifying an alternative in the SDEIS, and then summarily dismissing it because of alleged non-compliance with undisclosed TRRC operational criteria fails NEPA's requirements that the ICC take a hard look at all alternatives. Machle Mountain Audobon Society v. Rice, 194 F.2d 179 (9th Cir. 1990).

SDEIS Page B-5: Please identify with specificity the irrigated and sub-irrigated land that would be lost by right-of-way acquisition and "additional land lost" identified in the comparative impact table.

Summary

The impacts caused by the Tongue River Railroad on Montana, its soils and water, flora and fauna, and the ranchers, coal miners, railroad workers, Native Americans and others is significant and cannot be mitigated. The job loss, effects on land

owners, devastation of traditional Native American sites, effect on Montana's coal industry and others, all require selection of the "no action" alternative as the proper course of action. There is, however, another reason which argues for "no action" -- there is no need for this railroad.

The SEA has finally acknowledged in the SDEIS that no new mines will be served by the Tongue River Railroad. The Decker and Spring Creek Mines currently have service. The Montco Mine, which created the purported necessity for the original 89 miles of the Tongue River Railroad, has, like the original 89 miles, sat for nearly 10 years without a finger being lifted by its owners (who are one and the same in this case) to develop the mine. In fact, the Tongue River Railroad extension crosses the Montco mine plan, which makes one wonder whether the Montco Mine can be taken seriously. The non-renewed coal leases in the area further contributes to the fact that the railroad is not needed to serve new coal mines.

So, if all of Montana's and Wyoming's coal mines have rail service, and the impacts from the proposed railroad are such that, SEA's opinion to the contrary, they cannot be satisfactorily mitigated, the only practical solution is not to build the railroad.

NPRC supports the "no action" alternative. NPRC urges the ICC to realize building the Tongue River Railroad cannot possibly be "environmentally preferable" to the "no action" alternative and

deny TRRC's application based on unacceptable environmental impacts, a well as lack of need.

Respectfully Submitted,

Tom Breitbach
NPRC Chair

Teresa Erickson
NPRC Staff Director

Jeff Barber
NPRC Organizer

Exhibit A

MULLENDORE, TAWNEY & WATT, P.C.
ATTORNEYS AT LAW

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MEMORANDUM

TO: Northern Plains Resource Council
FROM: Mullendore, Tawney & Watt, P. C., Grant Parker and Sally Johnson
DATE: May 6, 1994
RE: Supplemental EIS Requirements for Tongue River Railroad

I. SUMMARY

This memorandum addresses the legal authority and responsibility of the Interstate Commerce Commission ("ICC") to conduct a Supplemental Draft Environmental Impact Statement ("SDEIS") on the Tongue River Railroad with a broader scope than the March 24, 1994 SDEIS, Finance Docket No. 30186 (Sub. No. 2). We conclude that the ICC has both the authority, and an obligation, to prepare a SDEIS to address socioeconomic concerns which were not considered, or were inadequately considered, in the ICC's Draft EIS or the March 24, 1994 SDEIS.

II. ANALYSIS

A. NEPA Requires the ICC to Prepare another Supplemental EIS

1. NEPA Generally. The National Environmental Policy Act ("NEPA") requires the preparation of an EIS whenever a final agency action has a significant impact on the quality of the human environment. 42 USC §4332(2)(C). The ICC has already determined that the proposed Tongue River Railroad ("TRR") extension from Ashland to Decker, Montana requires preparation of an EIS. A Draft EIS was prepared in July, 1992, and received extensive comments from Northern Plains Resource Council and other interested parties. The March 24, 1994, SDEIS specifically addresses the cost of railroad construction and operation on the TRRC.

Using NEPA's standards, a SDEIS is required when significant new information becomes available prior to a federal action, or if a Draft EIS does not adequately address environmental or socioeconomic impacts. As documented by the extensive comments on the Draft EIS, and the socioeconomic reports discussed below, there has been significant new information which the agency did not include in its analysis. This new socioeconomic information relating to the environmental impact of the proposed project was made available after distribution of the Draft EIS. The presence of this information warrants preparation of a SDEIS.

An agency must prepare a SDEIS if there are significant new circumstances or information relevant to environmental concerns bearing on the proposed action or its impacts. Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 372 (1989). The questions raised by NPRC and Montana citizens concerning impacts on the ranchers, the Northern Cheyenne Tribe, miner and railroad workers' jobs, and the Montana economy satisfy this test.

The CEQ regulations requires a SDEIS when:

> (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or
>
> (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

40 CFR §1502.9(c)(1). Since the ICC has elected to prepare a Supplemental EIS, the major question involves the scope of the Supplemental EIS. The ICC made a substantial change in its proposed action when it changed its preferred alternative for the course of the proposed Tongue River Railroad.

The agency apparently believed that this change precipitated the requirement for a SDEIS under 40 CFR §1502.9(c)(1)(i). Currently the scope of ICC's SDEIS is limited to investigating impacts related to the change in the proposed railroad's route associated with the Four Mile Creek alternative. The ICC's regulations specifically require the agency to follow its notice and comment procedures (such as publishing notice in the federal register and holding scoping hearings) to the extent practical. 49 CFR §1105.10(5). Thus, the ICC is obligated to consider the full scope of potential impacts in the SDEIS. Also, since the agency identified new alternative routes (Prairie Dog Creek, Canyon Creek, and Hanging Woman Creek) in the SDEIS, the agency is obligated to give these routes a hard look, and study the environmental impacts associated with each alternative. 42 U.S.C. §§4322(2)(C)(iii) and §4322(2)(E); 49 CFR §1105.7(e)(1); Marble Mountain Audubon Society v. Rice, 194 F.2d 179 (9th Cir.

1990). In addition, use of existing routes such as BN's current route, or upgrading the C&NW line across Nebraska must be considered. The adequacy of ICC NEPA compliance has been challenged on similar grounds in Missouri Mining, Inc. v. Interstate Commerce Commission, Cause No. 93-3722 (8th Cir. 1994). The ICC is obligated to fully address socioeconomic concerns, as well as alternative routes, in its EISs.

In addition to studying impacts resulting from the change in the preferred alternative for the railroad's route under 40 CFR §1502.9(c)(1)(ii), the SDEIS must also address any significant new information relevant to the environmental impacts of the proposed action. In this case, significant new information is available in the form of two socioeconomic analyses of the proposed railroad.

Following the publication of the Draft EIS, two independent economic analyses studied the likely consequences of the Tongue River Railroad on Montana coal production and its associated mining and railroad jobs. The first study, prepared by the Montana Department of Natural Resources at Representative Pat William's request, found a strong likelihood that completion of the Tongue River Railroad would redistribute coal production from the Montana fields at Colstrip to the Wyoming coal fields in the Powder River Basin. August 17, 1992, Memorandum from Bob Frantz to Alan Davis. A more recent study by John Duffield and Chris

- environmental significance of the new information;
- its probable accuracy; and
- the degree to which the agency considered the new information and evaluated its impact.

Id. Each of these factors will be discussed below.

Once the threshold requirement of a primary impact on the natural environment is met, an EIS must also discuss socioeconomic impacts of a proposed project. Como-Falcon Community Coalition v. U.S. Dep't of Labor, 609 F.2d 342, 345 (8th Cir. 1979), cert. denied, 446 U.S. 936 (1980). CEQ regulations define the "human environment" broadly and specifically include economic and social impacts when they are interrelated with natural or physical environmental effects. 40 CFR §1508.14. In this case, where the threshold environmental impacts are documented, the economic and social impacts comprise an important part of the human environment and deserve further study in a Supplemental EIS.

Courts have found economic interests intertwined with physical or environmental impacts under NEPA where a commercial center was threatened with economic decline and potential urban blight from the construction of a mall which would contain competing businesses. Daisy v. Hill, 424 F. Supp. 784 (W.D.N.Y. 1976). Similarly, a court found plaintiffs had standing to contest an action based upon threatened economic interests because plaintiffs lived in an area which would be impacted by

the construction of a new plant. Lake Erie Alliance for Protection of Coastal Corridor v. United States Army Corps of Engineers, 486 F. Supp. 707 (W.D Pa. 1980). Like the parties in Daisy and Lake Erie Alliance, Southeastern Montana faces economic decline as well as environmental impacts from the proposed Tongue River Railroad. The ICC has already elected to consider economic impacts by considering the cost of railroad construction and operation on the TRRC in its SDEIS.

The mine workers, railroad workers, and communities are likely to suffer from regional economic displacement in the area of the proposed railroad's environmental impact. The threatened socioeconomic impacts are intertwined with the environmental impacts of the proposed railroad and fall within NEPA's definition of the human environment. As demonstrated by the studies and comments, the Draft EIS either failed to address many of these concerns, or addressed them in a very inadequate fashion.

The two independent studies discussed above have confirmed the likelihood of regional economic displacement should the Tongue River Railroad be completed. The Frantz and Duffield studies discussed in this memo were available after the Draft EIS was published. The ICC has an obligation to consider such socioeconomic impacts of the proposed Tongue River Railroad.

Neither the Draft EIS nor the SDEIS sufficiently address the following socioeconomic impacts and the interrelated natural and physical environmental effects of the proposed railroad on the following:

a. mining and railroad jobs in southeastern Montana and the effects of these shifts in employment on social and emergency services, housing, and public education in these areas;
b. the daily operations and viability of existing farms and ranches in the Tongue River Valley;
c. the state and local tax base; and
d. the economic, cultural, and spiritual interests of the Northern Cheyenne and Crow Tribes.

The ICC has not adequately considered such socioeconomic and environmental impacts of the proposed Tongue River Railroad. The results of the studies and public comments are accurate and consistent and point to significant environmental and socioeconomic impacts which are related to the environmental impacts of the proposed railroad. Because there is environmentally significant new information, NEPA compels the ICC to prepare a Supplemental EIS addressing the socioeconomic consequences of the proposed railroad. This is especially compelling since the ICC has already elected to prepare a Supplemental EIS on a portion of the proposed line.

B. The ICC Has Discretion to Prepare a Supplemental EIS

An agency may prepare a SDEIS if the agency determines a supplemental action will further the purposes of NEPA. 40 CFR

§1502.9(c)(2). The express purposes of NEPA include declaring a national policy:

> which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; [and] to enrich the understanding of the ecological systems and natural resources important to the Nation

42 USC §4321. Agencies such as the ICC have the broad discretion to require the preparation of a Supplemental EIS which will further the sweeping environmental policy espoused by NEPA. This is also consistent with an agency's obligation to take a hard look at all potential environmental and socioeconomic impacts prior to taking any action. In this vein, the ICC's own regulations clearly provide the ICC with the discretion to supplement an EIS to address significant new and relevant circumstances or information. 49 CFR §1105.10(a)(5). Thus, Congress vested agencies with the discretionary authority, as well as the duty, to require a Supplemental EIS. Marsh, *Id.* at 371.

III. CONCLUSION

The ICC has both the authority and the responsibility to conduct a SDEIS on all potential impacts discussed above and in the comments on the Draft EIS. The failure of the Draft EIS to adequately address several impacts to farmers and ranchers in the

Exhibit B

Tongue River Valley, social and economic impacts relating to potential shifts in coal production from Montana to Wyoming, and potential job loss in Montana, requires preparation of a SDEIS. This is consistent with both the ICC's regulatory authority, and the mandate of the National Environmental Policy Act that all potential impacts to the quality of the human environment be fully addressed.

The Tongue River Railroad Extension and the Marketability of Montana Coal

Report for the Northern Plains Resource Council

John Duffield
Chris Neher
Bioeconomics, Inc.
Missoula, Montana

January 1994

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EXECUTIVE SUMMARY

This paper provides an economic analysis of the effect of the proposed Tongue River Railroad Company (TRRC) extension, from Ashland to Decker, on the demand for Montana Powder River Basin coal.

The Tongue River Railroad Company (TRRC) currently has approval from the Interstate Commerce Commission to build an 89 mile railroad line south from Miles City, Montana to Ashland. The purpose of this line (approved in 1986) is to serve the proposed Montco coal mine. Given the current approximately 125 million tons per year of excess capacity at existing Powder River Basin coal mines, the Montco mine will not be developed until well beyond the turn of the century - if ever.

TRRC has recently (June 1991) applied to extend the proposed railroad 41 miles from Ashland to Decker. The purpose of this proposed extension is not to serve new mines, but to shift current Wyoming and Decker-Spring Creek coal traffic from the existing parallel rail route through Huntley, Montana.

This proposed extension would open up the upper midwestern coal market, now the primary out-of-state market for Montana Colstrip area mines (Western Energy's Rosebud 1 and 2 mines, Westmoreland Resources' Absaloka mine, and Peabody Coal Company's Big Sky mine), to increased competition by Wyoming Powder River mines. The proposed rail extension would reduce the rail distance from the Gillette area to Minnesota power plants by about 130 miles. At current rail rates this could lead to reductions in delivered prices of about $1.30 to $1.80 for coal shipments from Wyoming mines. Given the slight competitive edge (and in some cases, slight cost disadvantage) that Montana Colstrip area mines now hold in the upper midwest, this change in delivered coal prices could significantly impact coal production at these Colstrip area mines. This, of course, assumes that the proposed TRRC line can be built at a cost that will permit it to offer competitive rail rates.

The extent to which these potential changes in delivered prices would be realized depends in large part on the Burlington Northern Railway (BN). The TRRC line and extension is a captive railroad that must rely on BN for connection to existing markets. TRRC currently has no agreement in place with BN. In the near term, the most that the proposed TRRC extension can hope to accomplish (given that Montco will not be built) is to shift traffic from the current BN route through Huntley to the Ashland-Miles City route. TRRC predicts that for the period 1995 to 2010 it will be primarily shipping coal from the existing Decker-Spring Creek mines (12 to 15 MTPY) and Wyoming Powder River (3 to 6 MTPY) (ICC, 1992, p1-8). There is no possibility that the TRRC projection of 2 to 18 MTPY from Montco and other "near mines" will be realized in the foreseeable future.

BN presumably makes money now on shipments through Huntley. This rail investment is in place and is being utilized. (In fact, BN has excess capacity on this route (Warnbolt, 1993).)

It would appear that BN would have no incentive to give up this traffic. If that is the case, then the TRRC line will have no business and serve no purpose.

Suppose, alternatively, that BN chooses to enter into an agreement with TRRC. There are three alternative assumptions about BN's possible role in this development that span the range of possibilities. First, BN could choose to absorb all the potential cost savings as profit; this leads to no change in delivered price and no changes in market shares. Secondly, BN could pass on all of the potential cost savings (the full potential change in delivered Wyoming coal prices of $1.30 to $1.80). A third possibility is that BN passes on some fraction of the savings, for example fifty percent. Given the vulnerability of current Montana coal contracts in the upper midwest, our finding is that changes of this magnitude in delivered price (either a 50% or 100% pass through of cost savings) would likely lead to the eventual loss of 1.56 MTPY to 4.99 MTPY of current contracted production at Montana Colstrip area mines. This would amount to a loss of approximately 10% to 32% of production at these Montana mines and a loss of 25% to 80% of the coal production now shipped out-of-state from these mines. The associated impact on the labor force would be on the order of 45 to 143 mining jobs with associated loss of direct income of about $1.8 to $5.7 million annually. This "most probable" estimate does not take into account imprecision in our model's estimated parameters. It is possible that impacts could be substantially larger or as low as zero.

The Decker-Spring Creek area mines in Big Horn County, Montana could potentially benefit from the TRRC extension. However, these mines are already operating at capacity. To conclude, with regard to the coal mining industry, the proposed TRRC extension has the potential to have a large negative impact on Montana coal mines. Independent of what BN chooses to do, there is no possibility that the railroad could have a positive impact on Montana coal mining for the foreseeable future. Given that the TRRC extension improves Wyoming's access to the upper midwest, it could also lessen the chance that other Montana coal deposits would ever be developed.

Since the proposed TRRC railroad will at best be largely shifting existing shipments over the BN-Huntley to the Ashland-Miles City route, it is clear that the net impact on the Montana railroad industry will also be negative. Instead of coal being shipped approximately 300 miles from Decker through Huntley to Miles City, coal could be shipped 121 miles on the proposed TRRC route with the extension. Since Decker-Spring Creek coal dominates the TRRC projected rail shipments, the gross revenues being realized by the Montana rail industry on these shipments could be reduced by half or more. This could be expected to impact railroad employment and related income. This basic conclusion holds even if Wyoming coal mines capture the market for all of the up to 6 MTPY of coal currently produced by the Colstrip area mines for the upper midwest market. This added volume is too small to significantly offset the reduction in ton-miles that would result from a shift in existing shipments from the Huntley route.

In the short run the potential annual losses of jobs and income in the railroad industry would be offset by the expenditure associated with construction of the proposed railroad. However, in the long run, there would almost certainly be a net loss in Montana railroad jobs and income, particularly in the Forsyth area.

The basic conclusion is that the TRRC is in a tenuous situation due to being a captive to BN. It does not appear that it is in BN's interest to sign any agreement with TRRC. In this case TRRC can not reach any markets and will serve no purpose. If TRRC reaches an agreement with BN, its primary purpose will be to shift traffic from an existing parallel line. The TRRC extension may result in significant changes in the delivered Wyoming coal prices to upper midwest markets. To the extent that prices change and contracts shift to Wyoming, there is the potential for significant negative impacts on the Montana coal mining industry. The only way that the TRRC could be a plus for Montana is if Montco was built or the Decker-Spring Creek mines expanded; this is very unlikely given the current 125 MTPY excess capacity at existing Powder River Basin mines.

At a time when existing mines and rail routes in the Powder River Basin have significant excess capacity, there is no significant public or private advantage to building new railroads, new mines or new railroads to serve such mines.

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1.0 INTRODUCTION

This paper provides an economic analysis of the effect of the proposed Tongue River Railroad Company (TRRC) extension, from Ashland to Decker, on the demand for Montana Powder River Basin coal.

The proposed TRRC extension, along with the currently approved but unbuilt Miles City to Ashland line would provide an alternative shipping route for Wyoming Powder River Basin coal to upper midwest markets. In the past the upper midwest has been the primary out-of-state market for Colstrip area Montana coal mines. (See maps in Figures 1-1 and 1-2.) The main issue examined here is a simple one: would the addition of a shorter alternative transportation route for Wyoming coal to the upper midwest result in the loss of coal sales contracts in these areas by Montana producers.

This report is organized as follows. The next two sections describe the current and expected future markets for Montana and Wyoming coal. After this, the effect of the proposed railroad extension on delivered coal costs at midwestern utilities is computed. This section provides a simple sensitive discussion of the vulnerability of current Rosebud County, Montana coal contracts. A following section presents a statistical model that estimates the probability that a given coal-fired electric generating plant will contract for Montana (versus Wyoming) coal as a function of delivered price. This model is used to compute the probable changes in the Montana coal market that could arise due to changes in transportation costs associated with the proposed railroad extension.

2.0 CURRENT MARKET FOR POWDER RIVER BASIN COAL

2.1 Overview

The primary users of Powder River Basin coal are coal-fired electric generating plants. Utilities choosing which coal to burn will generally choose the least cost coal. However, this choice is subject to coal qualities such as heat content (BTU per ton), ash and other chemical characteristics because equipment, such as boilers, are designed to work best with certain coals. Additionally, sulfur content may affect choices depending on the air pollution regulations that apply at the given plant and/or the type of flue gas desulfurization equipment (such as scrubbers) that are in place.

The key measure of cost is the delivered price of coal in dollars per million BTU ($/MBTU). This cost is the sum of the mine mouth price, including taxes, plus transportation costs. Transportation costs are the largest cost component for most sales of Montana and Wyoming coals.

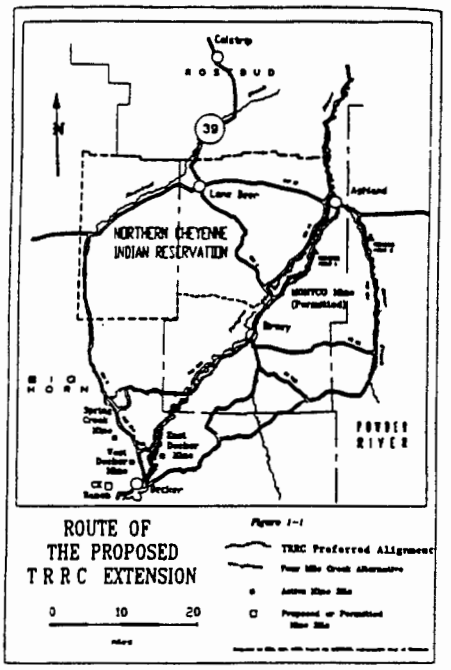

Figure 1-1. Route of the Proposed T R R C Extension.

Source: ICC, 1992

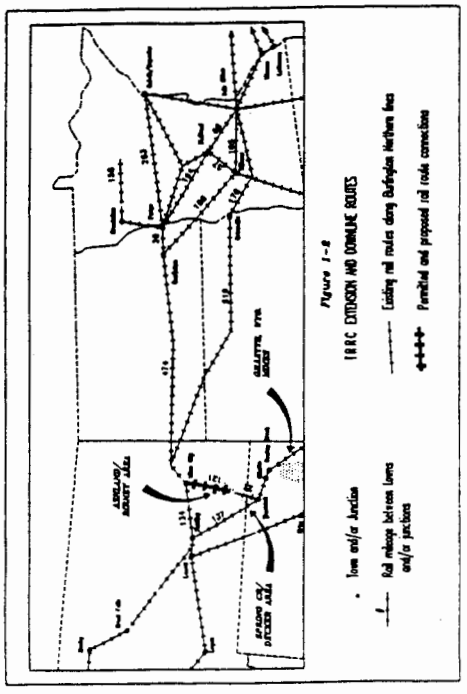

Figure 1-2. T R R C Extension and downline routes.

Source: ICC, 1992

2.2 Historical Production and Prices

Tables 2-1 and 2-2 provide a summary of historical production and prices at Powder River Basin mines in Montana and Wyoming. Montana production has shown little growth over the last decade, while Wyoming production has more than doubled. Prices have fluctuated over the years, but the long term trend in Wyoming and for Decker/ Spring Creek has been for a significant decline in real (constant dollar) prices. Colstrip mines have also seen a decrease in real prices, however not as great as those seen in the Decker area and Wyoming mines.

2.3 Coal Mine Capacity and Production

Table 2-3 summarizes coal mine capacity compared to production in the Powder River Basin in 1991 at the mine level. This comparison is updated and summarized for 1991 and 1992 in Table 2-4 and Figure 2-1. The basic finding is that the Decker and Spring Creek mines in Big Horn County, Montana are operating at capacity. This coal is at a premium due to a relatively high heat content and low sulfur (see Table 2-7 below). However, mines producing the lower BTU coals from the Colstrip area (Rosebud County, Montana) and Campbell County, Wyoming have large (30% to 40%) excess capacity at present. While the Wyoming mines produced over 160 million tons of coal in 1991, the excess capacity totaled approximately 116 million tons.

Excess capacity plus increases in productivity are the primary reasons for the decline in Wyoming prices seen in the last few years (see Table 2-2)(Gary Glass, Wyoming Geological Survey, Personal Communication).

2.4 Contract and Spot Market Sales in 1992 and 1993

Montana Powder River Basin coal is mined and sold by five companies mining seven primary Montana mines: Western Energy's Rosebud 1 and 2 mines, Westmoreland Resources' Absaloka mine, Peabody Coal Company's Big Sky mine, Spring Creek Coal Company's and Nerco's Spring Creek mine, and Decker Coal Company's Decker and East Decker mines (Tables 2-5 and 2-6). These companies and mines combined produce and market approximately 35 million tons of coal per year.

Table 2-5 provides a listing of the deliveries from the Montana North mines to their buyers for 1992 and the first six months of 1993. This information comes from the Federal Energy Regulatory Commission Form 423 reports for these years (see Appendix B). It can be seen that the current deliveries from this area comprise a relatively small number of utilities and plants. Table 2-6 provides the listing of 1992 and first half 1993 deliveries from the Montana South (Decker and Spring Creek mines). The first half of 1993 deliveries to the midwest may be down due to the impacts of this year's floods. For the sake of completeness, Appendix A provides a computer listing of the Campbell County, Wyoming mines and their deliveries for the same period. The total production in these mines in 1992 was 159.6 million tons.

Table 2-1 Historical production for Montana and Wyoming Powder River Basin mines.

Year	Rosebud County Production (tons)[1]	Big Horn County Production (tons)[1]	Campbell County Production (tons)[2]
1980	13,379,283	16,066,363	61,400,000
1981	13,571,946	19,571,777	71,600,000
1982	12,355,653	15,352,986	81,200,000
1983	12,141,044	16,370,281	88,200,000
1984	15,844,946	16,879,502	106,800,000
1985	15,616,857	17,484,672	113,900,000
1986	14,674,254	18,840,040	111,000,000
1987	15,286,376	17,358,295	122,300,000
1988	19,940,573	16,841,029	135,700,000
1989	17,395,566	16,898,598	143,800,000
1990	16,553,605	18,197,873	154,700,000
1991	17,968,888	17,968,888	164,900,000
1992	16,868,312	19,224,169	159,600,000

[1] Source: Montana Department of Revenue.
[2] Source: Gary Glass, Wyoming Geological Survey.

Table 2-2 Historical FOB mine prices for Montana and Wyoming Powder River Basin mines.

Year	Rosebud County Prices ($/ton)[1]		Big Horn County Prices ($/ton)[1]		Campbell County Prices ($/ton)[2]	
	$ / prices	Inflation adjusted prices[3]	$ / prices	Inflation adjusted prices	$ / prices	Inflation adjusted prices
1980	6.96	8.45	13.29	16.13	-	-
1981	8.52	9.37	13.88	15.27	-	-
1982	9.60	9.95	16.63	17.23	-	-
1983	10.44	10.48	16.81	16.88	9.77	9.81
1984	9.73	9.36	16.92	16.28	-	-
1985	8.36	7.77	16.19	15.05	-	-
1986	9.70	8.85	14.26	13.01	-	-
1987	9.25	8.14	15.06	13.26	-	-
1988	7.99	6.75	15.80	13.36	-	-
1989	8.53	6.88	12.60	10.16	-	-
1990	9.62	7.36	12.67	9.69	-	-
1991	10.07	7.39	12.26	9.00	6.68	4.90
1992	9.42	6.63	11.42	8.04	6.35	4.47

[1] Source: Montana Department of Revenue.
[2] Due to confidentiality constraints, the Wyoming Dept. of Revenue does not release average coal prices on a county or state level. Duffield et al. 1985 report a 1983 Wyoming Powder River Basin FOB mine price of $9.77/ton. The Wyoming Geological Survey began estimating the average Wyoming Powder River Basin FOB mine coal prices in 1991. The preliminary 1993 estimated Campbell County coal price is $6.18/ton.
[3] Nominal average prices are adjusted for inflation using the Consumer F . Index-Urban with 1982-84 = 100.

Table 2-3

POWDER RIVER BASIN MINE SUPPLY CAPABILITY

	Mine Status	Mine Capacity (1,000 Tons)	1991 Production (1,000 Tons)	Capacity Above Production (1,000 Tons)
Absaloka	Operating	7,000	4,113	2,887
Big Sky	Operating	4,000	[illegible]	1,400
Colstrip	Operating	16,000	14,073	1,927
Decker (East & West)	Operating	10,000	9,943	57
Spring Creek	Operating	7,000	6,740	[illegible]
Subtotal-Montana		44,000	[illegible]	[illegible]
Antelope	Operating	12,000	[illegible]	[illegible]
Belle Ayr	Operating	19,000	14,740	[illegible]
Big Horn	[illegible]	[illegible]	150	[illegible]
Black Thunder	Operating	[illegible]	[illegible]	0
Buckskin	Operating	12,000	[illegible]	[illegible]
Caballo	Operating	[illegible]	[illegible]	[illegible]
Caballo Rojo	Operating	15,000	[illegible]	[illegible]
Clovis Point	[illegible]	[illegible]	0	[illegible]
Coal Creek	Operating	12,000	151	[illegible]
Cordero	Operating	[illegible]	[illegible]	[illegible]
Dave Johnston	Operating	[illegible]	[illegible]	[illegible]
Dry Fork	Operating	15,000	[illegible]	[illegible]
Eagle Butte	Operating	[illegible]	[illegible]	[illegible]
Fort Union	Operating	[illegible]	[illegible]	[illegible]
Jacobs Ranch	Operating	18,000	[illegible]	[illegible]
North Antelope	Operating	[illegible]	[illegible]	0
Rawhide	Operating	[illegible]	[illegible]	[illegible]
Rochelle	Operating	12,000	[illegible]	[illegible]
Wyodak	Operating	[illegible]	[illegible]	[illegible]
Subtotal-Wyoming		[illegible]	[illegible]	[illegible]
Total		[illegible]	[illegible]	[illegible]

Source: BXG Inc. 1991 and AMAX Coal Co.
Note: Excludes North Rochelle & Bull Mt. Tracts

Source: Powder River Regional Coal Team 1992. 1992 market update for the Powder River Basin regional coal team.

Table 2-4. Coal mine production and capacity for 1991 and 1992.

Mine group	Mine capacity (1000 ton/yr)[1]	Production (1000 ton/yr)[2]		Excess capacity	
		1991	1992	1991	1992
Colstrip area mines	27,600	17,223	16,868	10,377	10,732
Decker & Spr. Cr.	17,000	17,969	19,224	0	0
Subtotal Montana	44,600	35,192	36,092	10,377	10,377
Wyoming Powder River Basin	280,700[3]	164,900	159,600	115,800	121,100

[1] Mine capacity figures are from Table 2-3 BXG Inc. 1991 and AMAX Coal Co. data.
[2] Production figures for Montana are from Montana Department of Revenue. Production for Wyoming is from Wyoming Geological Survey.
[3] Excludes North Rochelle and Bull Mountain.
Note: 1991 production figures in Table 2-4 deviate slightly from those in Table 2-3. State department figures are used in preference to industry numbers in this table. The finding of significant excess capacity in Wyoming is unchanged using state agency numbers.

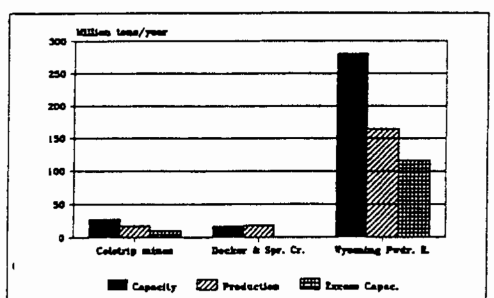

Figure 2-1. Coal mine capacity and production in the Powder River Basin of Montana and Wyoming, 1991.

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Table 2-6. 1992 and Jan-June 1993 Coal Sales for Montana South Powder River Basin Mines

Decker Mines					
Commonwealth Edison	Crawford	8,400	0.00	81,000	0.02
Commonwealth Edison	Fisk	87,900	0.00	132,000	0.04
Commonwealth Edison	Joliet	387,000	0.03	457,000	0.13
Commonwealth Edison	Powerton	1,278,000	0.11	28,000	0.01
Commonwealth Edison	State Line	452,000	0.04	198,000	0.06
Commonwealth Edison	Waukegan	270,000	0.02	176,000	0.05
Commonwealth Edison	Will County	1,034,100	0.08	157,100	0.04
Detroit Edison	Belle River	2,224,000	0.18	302,000	0.09
Detroit Edison	Monroe	1,119,000	0.09	290,000	0.08
Detroit Edison	St Clair	2,318,000	0.20	419,000	0.12
Detroit Edison	Trenton Channel	-	0.00	12,000	0.00
Marquette Bd Pwr & L	Shiras	61,900	0.01	10,900	0.00
Mississippi Power	Jackson City	-	0.00	178,882	0.05
Pacificorp	Centralia	998,000	0.08	329,000	0.09
Portland Gen. Electric	Boardman	1,833,000	0.15	284,000	0.08
Tacoma Public Utd.	Steam No. 2	4,000	0.00	8,040	0.00
Wisconsin Elec. Power	Presque Isle	79,900	0.01	468,400	0.13
Wisconsin Power & Lgt	Rock River	11,005	0.00	-	0.00
Total sales		11,926,805	1.00	3,492,023	1.00

This coal production has a significant impact on employment and business incomes in the vicinity of the mines as well as on tax revenues for the state of Montana both from resource taxes and income taxes. Additionally, rail transportation of this coal along lines operated by the Burlington Northern Railroad provides significant employment in the area, particularly in the communities of Forsyth, Miles City, Montana and Sheridan, Wyoming.

2.5 FOB Mine Price

The costs associated with production and producer's profit plus the applicable taxes and royalties equal what is called the FOB mine price of the coal. Because of confidentiality, it is difficult to obtain prices at the mine level. In 1992 this average FOB mine price for Rosebud County, Montana coal was $9.42/ton (Montana Department of Revenue, 1993). Campbell County, Wyoming coal, by comparison, had an average FOB mine price of $6.53/ton (pers. comm. Gary Glass, Wyoming Geological Survey).

As noted, the delivered price of coal is a function of the heat content of the coal (measured in BTU/lb), the mine mouth price, and transportation costs. For the coal deliveries in 1992 and the first half of 1993 which we examined, Rosebud area coal had an average BTU content of 8648 BTU/lb, Decker area mines were 9566 BTU/lb, and Campbell County, Wyoming mines were 8549 BTU/lb (Table 2-7). Rosebud and Campbell County coals are therefore roughly of the same rank with Decker area coal being of a higher rank.

Regarding sulfur content, the 97/93 shipments examined showed Rosebud coal averaging 0.66% sulfur, Decker area coal averaging 0.49% sulfur, and Wyoming coal averaging 0.34% sulfur. This is significant in that of the three areas, only Rosebud County produces coal with a sulfur content higher than the emissions allowed by federal regulations for plants built during certain years and operating without SO$_2$ scrubbers (the basis for these regulations is 1.2 lbs SO$_2$ per million BTU/lb). Depending on coal markets current, all three areas produce relatively low ash coal, however the Decker area coal contains a relatively high percentage of sodium in its ash, making it less desirable in the report.

As would be expected, a large portion of the mine mouth price of coal is attributable to the cost of recovering that coal from the earth. It appears that Wyoming Powder River Basin mines have a significant production cost advantage over Rosebud County mines. In the strip mining of coal a certain amount of overburden must be removed in order to expose the coal seam. A statistic, called the stripping ratio, measures the amount of overburden which must be removed in order to expose one ton of coal for extraction. In Wyoming this stripping ratio is approximately 1.35 (a Wyoming producer must remove 1.35 tons of overburden for each ton of coal extracted). In the Rosebud mines this stripping ratio is approximately 3.28 (Montana Coal Council, 1987).

Table 2-8. continued

Spring Creek					
Detroit Edison	Belle River	1,260,000	0.24	130,000	0.10
Detroit Edison	Monroe	621,000	0.12	126,000	0.10
Detroit Edison	St. Clair	1,491,000	0.28	231,000	0.18
Detroit Edison	Trenton Channel	540,000	0.10	181,000	0.14
Minnesota Power	Clay Boswell	903,400	0.17	315,500	0.24
Mississippi Power	Jackson City	82,210	0.02	0	0.00
Otter Tail Power	Hoot Lake	123,000	0.02	74,140	0.06
Pacificorp	Centralia	22,000	0.00	90,000	0.07
Wisconsin Power & Lgt	Nelson Dewey	242,832	0.05	138,228	0.10
Wisconsin Power & Lgt	Rock River	-	0.00	11,118	0.01
Total sales		5,376,242	1.00	1,310,986	1.00
Montana South Total					

Source: FERC 423 data, 1992-93.

Table 2-5. 1992 and Jan-June 1993 Coal Sales for Montana North Powder River Basin Mines

Absaloka Mine					
Northern States Power	King	314,800	8.10	156,100	10.89
Northern States Power	Sherburne Cnty.	2,884,300	74.77	903,500	62.28
So. Minn. Muni. Pwr. Agy.	Sherburne Cnty.	312,000	8.03	288,000	20.60
Wisconsin Elec. Power	Presque Isle	214,800	8.21	81,000	5.58
Marquette Bd Pwr and Lgt	Shiras	30,800	0.88	9,800	0.68
Total sales		3,756,700	100.00	1,438,400	100.00
Big Sky Mine					
Northern States Power	Sherburne Cnty.	118,800	8.32	-	-
Minnesota Power	Syl Laskin	66,100	2.88	66,600	5.44
Minnesota Power	Clay Boswell	1,887,400	81.88	1,138,300	84.58
Total sales		2,272,300	100.00	1,204,900	100.00
Rosebud Mine					
Montana Power	Colstrip 1-4	8,834,000	71.13	3,192,000	89.48
Montana Power	Corette	749,000	8.38	328,000	7.09
Northern States Power	Sherburne Cnty.	1,318,300	8.43	322,500	7.02
Wisconsin Power and Lgt	Columbia	1,604,332	11.48	571,071	12.43
Marquette Bd of Pwr & Lgt	Shiras	30,800	0.22	9,800	0.22
So Minn Muni Pwr Agy	Sherburne Cnty.	145,800	1.04	174,000	3.78
Wisconsin Elect Power	Presque Isle	188,800	1.34	-	-
Total Sales		12,870,832	100.00	4,597,371	100.00
Montana North Total					

Source: FERC 423 data, 1992-93.

Table 2-7. Characteristics of coal, by location of mines.

Characteristic	Colstrip area mines	Decker-Spring Cr. mines	Wyoming Powder River mines
Heat rate BTU/lb	8648	9366	8549
1992 ave. price ($/ton)	9.42	11.42	6.35
1992 ave. price (¢/10^6 BTU)	54.0	61.0	37.1
Percent sulfur	.669	.609	.349
Percent Ash	8.38	4.96	5.01
Meets SO2 compliance*	NO	YES	YES

*1.2 lbs SO2 per 10^6 BTU.

The Montana North producers, therefore, must remove significantly more overburden per ton of coal extracted than Wyoming producers. This translates into higher production costs for the Rosebud mines than are incurred by Wyoming producers. Additionally some of the newer Wyoming mines are quite large and may achieve significant economies of scale in production.

A second component of the delivered cost of coal is attributable to taxes and royalties assessed on the production and sale of the coal. In Montana there are currently 3 state taxes and 2 federal taxes associated with the production of subbituminous coal: a 15% state severance tax, a 5% state gross proceeds tax , a .5% state resource indemnity tax, a 35 cents per ton federal mine reclamation tax and a 4.4% federal black lung tax. Wyoming allows producers a production allowance and then imposes a 6% ad valorem tax (Campbell County assessment) and a 7% state severance tax on the adjusted taxable value. The two federal taxes are also imposed on the Wyoming producers. Producers in both states may also have to pay landowners royalties on their coal sales.

2.6 Current Transportation Rates

The final component of the delivered cost of coal is the transportation cost of getting the coal from the mines to the generating facilities. Information on current rail rates for coal deliveries is not readily available due to the confidential nature of transportation contracts. Duffield et al. (1985) used an estimated average rate of .017 $/ton mile for coal unit trains. These rates, however, appear to have declined significantly in recent years. The Montana

Coal Council (1987) speculated that rates were then in the .014-.016 $/ton mile. Everett and Neubauer (1992) cite average coal transportation revenue for Burlington Northern of .010 $/ton mile for 1991.

Given the divergence of these estimates, and the sensitivity of our results to the assumed transportation rates, we use three different alternative transportation rates in the analysis described below: 0.010, 0.012 and 0.014 $/ton-mile.

No matter whether the low or high estimate of transportation costs is used, for the upper midwest coal market of concern in this analysis transportation costs dominate all other components of delivered cost.

The analysis presented here takes all components of the delivered coal cost as fixed except for transportation. Given current production costs and taxes, we will examine the effect of shortening the mileage (and thus reducing the transportation costs) for Wyoming coal into traditional Montana markets.

2.7 Statistical Analysis of Delivered Prices for Coal

Given the confidentiality restrictions on coal prices and transportation rates, the only extensive publicly available data on coal prices at the mine-plant level is the coal delivery prices provided by the Federal Energy Regulatory Commission (FERC). In order to verify and examine the range of actual transportation rates currently in use, we developed a statistical model to analyze this data to separate out the transportation component of delivered price.

2.7.1 Theoretical Model

Delivered price is the sum of the mine mouth price, any fixed transportation costs and the variable transportation cost as a function of distance, or:

$$P_{ij} = \alpha + \beta D_{ij} \qquad (1)$$

Where:
P_{ij} = average delivered price from mine i to plant j.
α = intercept, should equal average FOB mine price plus fixed transportation costs for the group of mines i = 1...n (estimated parameter)
D_{ij} = distance from mine i to plant j.
β = cost per unit transportation distance.

The unknown parameters in this model, α and β, can be estimated using regression analysis. One would expect that β would correspond to variable transportation rates per mile and the intercept, α, would correspond to mine mouth prices plus any fixed transportation cost component.

2.7.2 Data

The source of coal delivery data used in this analysis was FERC 423 reporting data for the most recent deliveries (1992 and January through June of 1993). Electric utilities are required to report this "cost and quality of fuels" information to FERC on a monthly basis (see Appendix B for a sample reporting form and data description). This data was sampled and aggregated as follows. All non-coal fuel sources were excluded from the data. The remaining coal deliveries were aggregated into "supermines" or geographical mine groups as follows: Rosebud County, Montana mines were grouped as a Montana North (MN) mine group, Bighorn County, Montana mines formed a Montana South (MS) mine group,and Campbell County, Wyoming mines formed a Wyoming (WY) mine group.

Having established three mine groups (MN, MS, WY), a distance matrix was constructed showing the estimated mileage from each of the mine groups to each generating facility served by any of the three mine groups.

The distances between mine groups and plants were estimated by use of a rail-line map of the U.S. and a digitizing map planimeter. Least distance main line routes from mine groups to generating facilities were measured and recorded.

2.7.3 Results

Table 2-8 shows the estimated OLS models of price prediction for each contract type and each mine group (where a model could be estimated from the actual observed delivery data). In these models the dependent is measured in 100ths of a cent per million BTUs and the independent variable is measured in miles. The estimated models have highly statistically significant estimated parameters with the theoretically expected signs. The models show that delivery costs increase with distance, as one would expect. However, these simple models are not able to explain all of the variation in delivered prices - particularly for the Wyoming deliveries. This could be in part due to significant differences in actual FOB mine prices and transportation rates across Wyoming shipments. The Montana models explain most of the variation in delivered prices, but the samples are quite small. The distance parameter in the Montana South spot model is not significant at the 90th percentile.

Table 2-8. Estimated OLS models of spot and contract delivered prices as a function the estimated mine group to plant distance.

Mine group/ contract type	Intercept (t-stat)*	DIST (t-stat)	Sample Size	Adj. R-square
WY - Spot	5170.2 (5.45)	4.12 (4.30)	41	.299
WY - Contract	5463.2 (3.35)	7.313 (4.77)	46	.321
MN -Spot	Not able to estimate			
MN - Contract	6612.8 (11.11)	8.503 (7.43)	7	.885
MS - Spot	7026.5 (6.70)	4.331 (4.54)	3	.867
MS - Contract	Not able to estimate			

Note: all coefficients are significant at the 95% level of confidence except the MS-spot intercept which is significant at the 90% level and the MS-spot coefficient on DIST, which is significant at the 80% level.

Table 2-9 provides a more easily interpreted summary of these results in terms of dollars/ton and dollars/ton-mile for the specific coals at issue. The basic finding is that the average variable transportation rates for Montana North coals are (for a 95% confidence interval) between 1.1 and 1.9 cents per ton mile, and for Wyoming coals are between 0.7 and 1.9. Note that the model estimates the average variable transportation cost, not the average total transportation cost. This in part explains the relatively low average rates for the spot shipments listed in Tables 2-8 and 2-9. These findings suggest that the average transportation rate range described above ($0.010 to $0.014) is generally appropriate.

Table 2-9. Estimated FOB mine prices (dollars per ton) and rail rates from price prediction models.

Model	Point estimate	Lower 95% confidence interval	Upper 95% confidence interval
Estimated FOB mine prices plus fixed transportation costs (dollars per ton)			
Montana North - Contract	11.44[1]	9.42	13.46
Montana South - Spot	13.16	9.31	17.01
Wyoming - Spot	8.84	5.66	12.02
Wyoming - Contract	9.34	3.87	14.81
Estimated rail rate (cents per ton-mile)			
Montana North - Contract	1.5	1.1	1.9
Montana South - Spot	0.8	0.5	1.2
Wyoming - Spot	0.7	0.4	1.0
Wyoming - Contract	1.3	0.7	1.9

[1] Note: observed FOB prices for 1992 for all shipments were $9.42/ton for Montana North, $11.42/ton for Montana South, and $6.33/ton for Wyoming.

2.8 Conclusions Concerning the Current Market

The basic conclusions concerning the current market for Powder River Basin Coal are:

1. In the last decade Montana Powder River coal production has been relatively stable.

2. Prices have been declining in Wyoming due to excess capacity and increased productivity.

3. Wyoming Powder River mine mouth prices are substantially below those of the Colstrip, Montana area mines.

4. Transportation costs dominate delivered costs and are an important determinant of which coal is cheapest at a given coal-fired generating plant.

5. There is very substantial excess capacity in the Powder River Basin mines, except for the Decker-Spring Creek area mines which are operating at capacity.

3.0 FUTURE DEMAND FOR POWDER RIVER BASIN COAL

For the near future, the demand for Powder River Basin coal will continue to be dominated by the coal-fired electric generation sector. The growth in electric demand is projected to be relatively low to moderate. The share of this growth that goes to the Powder River coal mines will depend on many factors, including transportation rates and air pollution regulations. It is beyond the scope of this study to develop an independent forecast of the growth in the demand for Powder River Basin coal.

However, a number of recent forecasts (which do take these factors into account) predict excess capacity will persist for Powder River Coal mines out to the end of the forecast period (2010). These forecasts are summarized and compared to designed mine capacity in Figure 3-1.

The main conclusion is that excess capacity will likely persist in the Powder River Basin coal well beyond the turn of the century. For the issues at hand, the main implication is that it is very doubtful that any new mines, including the proposed Montco mine, will be built any time soon.

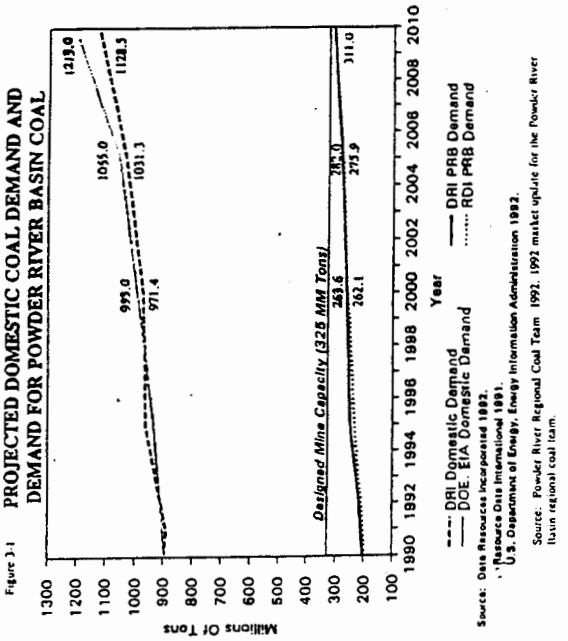
4.0 IMPACT OF TRR EXTENSION ON DELIVERED PRICES

4.1 Montana Mines and Contracts of Concern

The construction of the Tongue River Railroad extension would reduce the distance between the Wyoming mines and the upper midwest market by 128 miles (see Figures 1-1 and 1-2). This distance for the Decker area mines would be reduced by about 160 miles. The proposed TRR extension therefore has two primary effects. First, the Wyoming mines would become more competitive with the Montana North area mines in these markets. Second, the Montana South mines would become more competitive with Montana North or PRB.

As was stated previously, the delivered cost of coal, is determined by three primary factors: the costs of production, taxes, and the transportation cost per ton. Of these three, transportation costs are the largest component of the delivered price of Montana coal to upper midwest markets.

Figure 3-1 PROJECTED DOMESTIC COAL DEMAND AND DEMAND FOR POWDER RIVER BASIN COAL



Source: Data Resources Incorporated 1992.
Resource Data International 1991.
U.S. Department of Energy, Energy Information Administration 1992.
Source: Powder River Regional Coal Team 1992, 1992 market update for the Powder River Basin regional coal team.

Table 4-1 lists upper midwest generating facilities which are supplied by both Montana Mines and Wyoming mines. Table 4-1 also shows the delivered cost of the coal to the utility. It is apparent that some Montana coal contracts are vulnerable to competition from Wyoming Powder River Basin mines. In several cases Wyoming coal meets or beats the delivered price of Montana coal. One reason for the low cost of Wyoming coal is that an increasing percentage of this coal has been sold on the spot market in recent years. Officials at the Wyoming Geological Survey (who provided information on Campbell County Wyoming mine-mouth purchase prices) estimated that 42% of 1993 sales will be spot market sales. Additionally, they predict that 62% of sales in 1997 will be on the spot market. This increase in the share of spot market sales for the Wyoming mines is most likely a result of the very large amount of excess production capacity in the Wyoming mines. Spot market coal prices in a period of excess capacity can be significantly lower than long term contract prices.

A simple test of the vulnerability of Montana North coal contracts due to the construction of the TRR can be performed using three pieces of information: 1) the average Campbell County Wyoming FOB mine price for coal in a given year, 2) the average Rosebud County Montana FOB mine price for coal in the same year, and 3) the average cost per ton/mile to ship coal to the upper midwest market. As was discussed above, the 1992 average Rosebud County FOB mine price was $9.43 per ton, and the 1992 Campbell County, Wyoming average FOB mine price was $6.35 per ton.

Table 4-2 illustrates the effect of shortening the distance between the Wyoming mines and Miles City on Montana's locational price advantage. This cost difference would, of course, be maintained out to the upper midwest for shipments through Miles City. Table 4-2 presents estimates of the FOB Miles City price for Montana and Wyoming coal at three alternative possible rail rates: 1.0 cent, 1.2 cents and 1.4 cents per ton mile. For the case of existing rail routes, Table 4-2 shows the Rosebud mines enjoy a competitive cost advantage at the two higher rail rates. However, if rail distances for Wyoming coal shipments are reduced by 128 miles, Wyoming would gain a cost advantage at all analyzed rail rates (Table 4-2).

Figure 4-1 illustrates the basic effect of the TRR extension - the Montana breakeven to competitive edge becomes a substantial price disadvantage ($0.74/ton to $1.41/ton) at all rail rates.

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Table 4-1. Multiple Suppliers of Coal to Generating Facilities Supplied by Montana North Mines

Mine	Contract type	Sulfur	Quantity	Ave. Cost/Ton
Marquette Board of Light and Power			**Shiras**	
Absaloka	Contract	42.44	40,700	32.78
Decker	Contract	42.44	81,900	32.78
Rosebud	Contract	42.44	40,700	32.78
Minnesota Power			**Clay Boswell**	
Big Sky	Contract	84.72	3,138,700	20.42
Spring Creek	Contract	33.41	1,451,500	22.26
Black Thunder	Spot	33.50	150,300	17.84
Cordero	Spot	35.50	148,100	16.23
Northern States Power			**King**	
Absaloka	Contract	62.82	472,900	17.89
Antelope	Contract	31.44	611,500	21.31
North Antelope	Contract	21.59	1,162,100	19.45
North Antelope	Spot	20.00	108,800	17.27
Northern States Power			**Sherburne County**	
Absaloka	Contract	62.18	3,487,800	19.89
Big Sky	Spot	67.50	115,900	19.97
Decker	Spot	41.00	103,600	21.85
Rosebud	Contract	71.36	1,837,800	28.53
Black Thunder	Contract	36.63	1,749,200	20.9
North Antelope	Contract	20.44	225,100	20.97
Rochelle	Contract	21.82	3,519,000	20.69
Rochelle	Spot	21.00	168,100	20.99

Table 4-1 cont. Multiple Suppliers of Coal to Generating Facilities Supplied by Montana North Mines

Mine	Contract type	Sulfur	Quantity	Ave. Cost/Ton
So. Minnesota Muni. Power Agency			**Sherburne County 3**	
Absaloka	Contract	64.00	811,000	20.42
Rosebud	Contract	71.70	372,000	20.58
Wisconsin Electric Power			**Presque Isle**	
Absaloka	Contract	55.20	295,600	30.83
Decker	Contract	57.00	79,900	35.24
Rosebud	Contract	55.20	295,600	30.05
Black Thunder	Spot	33.00	35,000	22.15
Cabello	Spot	42.00	25,200	21.4
Wisconsin Power and Light			**Columbia**	
Rosebud	Contract	73.06	1,971,048	28.12
Rosebud	Spot	71.00	204,357	25.59
Belle Ayr	Spot	28.33	255,343	17.23
Cabello	Spot	28.67	197,091	17.38
Cabello Rojo	Spot	38.89	756,002	17.72
North Antelope	Spot	19.33	548,772	18.19
Rochelle	Spot	20.37	1,348,638	18.26

Source: FERC 423 data.

Table 4-2. Estimated Average Effect of Tongue River Railroad Extension on the Competitive Positions of Montana and Wyoming Coal

Case of existing rail routes				
Freight to Miles City at 1.0 cents/ton/mile	$0.88	$3.80	$2.95	($2.95)
Freight to Miles City at 1.2 cents/ton/mile	$1.03	$4.56	$3.53	($3.53)
Freight to Miles City at 1.4 cents/ton/mile	$1.20	$5.32	$4.12	($4.12)

* Note: parentheses indicate a negative cost advantage

Case Of Existing Routes Plus Tongue River Railroad Extension

Freight to Miles City at 1.0 cents/ton/mile	$0.88	$2.53	$1.68	($1.68)
Freight to Miles City at 1.2 cents/ton/mile	$1.03	$3.04	$2.01	($2.01)
Freight to Miles City at 1.4 cents/ton/mile	$1.20	$3.54	$2.34	($2.34)

Note: FOB mine prices were from Montana Dept of Revenue and Wyoming Coalspur Association. Freight rates based on an average distance of 85.5 miles from Rosebud County mines to Miles City for Montana. Freight rates for Wyoming based on average distances to Miles City of 341 miles in the base case and 253 miles in the Tongue River Railroad Extension case.

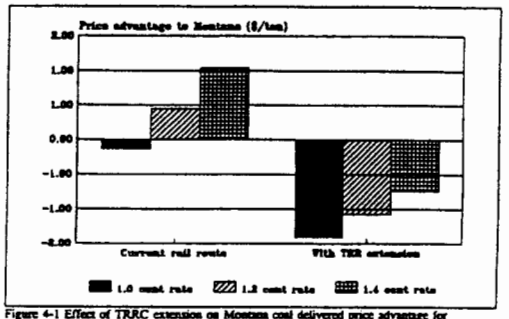

Figure 4-1 Effect of TRRC extension on Montana coal delivered price advantage for shipments through Miles City.

It is important to note that the above analysis assumes that the cost savings of the reduction in mileage would be passed on to the coal purchasing utilities. What might be a more realistic outcome would be that a portion of the freight savings would be passed on to the utilities with the remainder being captured by BN and TRRC. In this eventuality the shift of cost advantage would be lessened and Montana could retain a slight cost advantage at higher freight rates. It must be pointed out that this is a relatively simple aggregate analysis and thus it should only be used as a general indication of the vulnerability of Montana coal contracts to changes in both rail delivery distances and rail rates.

4.2 Conclusions

The basic finding of this section is that the TRR has the potential to significantly change the delivered cost of Wyoming coal into the upper midwest market. For the range of rail rates examined, this change amounts to $1.28 to $1.79 per ton.

The impact of this potential change in delivered cost on the market for Montana Rosebud County coals depends on two primary factors. The first is the extent to which these potential

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cost savings are passed through to utilities by Burlington Northern Railway (BN). BN has the power to make or break the TRR project since this is entirely a captive railroad that needs to utilize BN to reach any important coal markets. It is difficult to predict what BN will do (see Everett and Neubauer 1992 for a discussion). For purposes of this analysis we will examine the full range of possible BN actions: 1) no savings passed through (e.g. no change in delivered prices and therefore no change in markets); 2) BN passes through 50% of the savings; and 3) BN passes through 100% of the savings.

The second factor is what effect a change in delivered price will have on contracts. It is apparent from the FERC delivered price data (for example, Table 4-1) that utilities sometimes buy from a number of mines and at a range of prices. This may be in part due to older contracts being supplanted in part by current contract or spot purchases. Utilities may also want a diversity of suppliers for security. Additionally, some costs of burning coal to a utility are not reflected in delivered price, such as the costs related to sulfur, ash, sodium or moisture. The only extensive information available on how delivered prices affect contracts is the raw FERC data on coal deliveries and prices. In the following section we investigate the statistical relationship between differences in delivered prices and the probability that a mine in the Colstrip, Montana area (as opposed to a Wyoming Powder River Basin mine) will hold a contract. This model is then used to predict the effect of delivered price changes (due to the proposed TRR extension) on the Montana coal market.

It is important to note that no new mines are likely to be built in the Powder River Basin for the foreseeable future - including the proposed Montco Mine. Accordingly, we do not examine the possible impact of having the Montco mine in production. We also are not examining the potential impacts of the TRR extension on the market for Decker-Spring Creek mines (possibly at the expense of Colstrip area mines) because the Decker-Spring Creek mines are already at capacity.

5.0 EFFECT OF CHANGES IN DELIVERED PRICES ON MONTANA COAL SALES

5.1 Theory

A statistical model is developed in this section to explain the effect of changes in relative delivered coal prices on Montana coal sales.

Commodities which have a low value to weight ratio, such as coal, have a fairly well-defined geographical market due to the importance of transportation costs in delivered prices. The basic theory of spatial markets is due to Hyson and Hyson (1950) and has been previously applied to model coal markets by Watson (1972), Duffield, Power and Wheeling (1976), Campbell and Wang (1978), and Duffield et al. (1982). These studies focused on locating well-defined market boundaries between competing coals. An alternative formulation of the problem is to examine the probability of a plant in a given location buying a specific coal. Yoshimura (1982) used this idea to develop an empirical spatial market model for Powder

River coal. This section draws on this previous research to develop a probabilistic model for Montana coal sales.

Other things equal, a given mine is likely to win a coal contract if it can supply coal more cheaply to a given coal-fired generating plant than competing mines (that supply similar quality coals). The bigger the cost advantage a mine has over competitors, the more likely a sale or contract becomes. This simple idea can be formalized in a so-called logistic model. Logistic models explain the probability of some either/or event happening as a function of an appropriate set of explanatory variables. In the case at hand, we expect that the probability that a Montana Colstrip area mine will have a contract at a given plant instead of the competing Wyoming Powder River group of mines is a function of differences in predicted delivered coal prices. This is a simplification of the real-world utility decision process in that sulfur characteristics of the coals and air pollution regulations affecting the plants are not included in the model specification. The mathematical formulation of this model and the definition of key variables is as follows:

$$\ln\left(\frac{P_{ij}}{1 - P_{ij}}\right) = \alpha + \beta\, x_{ij} \qquad (2)$$

Where:
P_{ij} = probability that mine group i will have a contract delivery to plant j ($0 \le P_{ij} \le 1$).
C_{ij} = predicted delivered cost of coal from mine group i to plant j.
$C_{i+1,j}$ = predicted delivered cost of coal from mine group i+1 to plant j.
$x_{ij} = C_{ij} - C_{i+1,j}$ = difference in predicted delivered price from mine group i to plant j compared to mine group i+1 (e.g. MT north versus WY)

The parameters of this model are estimated using the actual observed set of contracts for Powder River Basin coal and predicted price differences based on the models described in section 2.7.3.

This model can be used to predict the probability that a given plant will contract for the coal of interest by solving for P_{ij} or:

$$P = \exp(\alpha + \beta x)\ (1 + \exp(\alpha + \beta x))^{-1} \qquad (3)$$

One can also examine the sensitivity of the probability of a contract to the price difference by taking the derivative of P_{ij} with respect to Z_{ij}. It can be shown that this derivative is given by:

$$\frac{dp}{dx} = \beta\, P\,(1 - P) \qquad (4)$$

The model presented here is fairly simplistic in that only the difference in delivered coal costs (on a $/MBTU basis) is assumed to affect the probability of a contract. However, the costs of burning the coal and meeting air pollution standards are also relevant to the utility's decision, as well as nonprice considerations such as the security and reliability of the coal supply. For coals of similar BTU content and sulfur content, delivered coal prices are probably a good proxy for the total fixed and variable costs that can be associated with the fuel choice. (Models were estimated that included variables measuring coal sulfur content and whether a given plant was burning compliance coal; these variables were not statistically significant.)

A consideration in interpreting these types of models is that the observed coal shipments are for contracts of differing vintages. Relative prices may have changed considerably since the time when older contracts were finalized. However, many contracts have terms that allow for prices to be revised over time.

5.2 Data

The data set for this analysis was created by adding additional variables to the FERC Form 423 data set described in section 2.7.2.

After eliminating cases with incomplete information, a large data set was created for contract purchases. This data set contained the following variables: the mine group, the generating facility served, a qualitative (1,0) variable indicating whether the mine group had sales to that plant, the average sulfur content of coal purchased by that plant, a compliance dummy variable indicating whether the average sulfur content of plant coal purchases was below the 1.2 lbs per million BTU compliance level, and the difference between the predicted average Montana mine group delivered contract price to that plant and the predicted minimum delivered contract price from another mine group - in this case Wyoming.

The predicted Montana and Wyoming mine group delivered contract prices were calculated for each observation based on predictive models relating delivered prices and distance for the actual observed contract deliveries made by each of the mine groups (see Section 2.7.3).

To summarize, this data set had the following variables: mine group, generating facility, qualitative (1,0) variable for whether sales were made by a Montana North mine, the difference between the predicted Montana North mine group price and the predicted Wyoming mine group price to that plant, average sulfur content, and a compliance coal dummy variable. All plants were included that had a Montana North or Wyoming coal contract delivery in 1992 - a set of 73 plants.

5.3 Results for Montana North versus Wyoming Coal

In this section we describe a model for the effect of changes in delivered prices due to the TRR extension on the market for Montana North coal versus Wyoming coal.

Table 5-1 shows the estimated model for Montana North versus Wyoming. In this model the dependent qualitative response variable was 1 if Montana North had a contract and 0 if Wyoming had a contract. The independent variable was defined as the predicted Montana North contract price minus the predicted Wyoming contract price. Table 5-1 shows that the estimated coefficient on delivered price difference for this model is highly significant (at the 99% level of confidence) and has the correct sign. As expected, the model shows that the more Montana on the delivered price exceeds the Wyoming delivered price at a given plant the lower the probability that Montana coal will have a contract at the given plant. The estimated intercept parameter is statistically significant at the 90% level of confidence. The model predicts correctly 96.7% of the time.

Table 5-1. Estimated logistic regression models of observed sales as a function of predicted cost differential between the Montana North mine group and Wyoming mine group.

Variable / statistic	Contract coal sale model
Intercept (t-stat)	1.221 (1.70)
Cost Difference (t-stat)	-0.00159 (-3.02)
Sample size	56
Percent Correct Predictions	96.7%

Figure 5-1 shows a plot of the probability that Montana North will have contract sales to a coal fired power plant as a function of the difference between predicted Montana and Wyoming contract prices. It is evident with this model that the slope of the predicted curve is steepest at a probability of 0.50. This indicates, as expected, that a mine or mine group is the most susceptible to relative price shifts when the model predicts them to have a 50/50 chance of having contract sales to the plant.

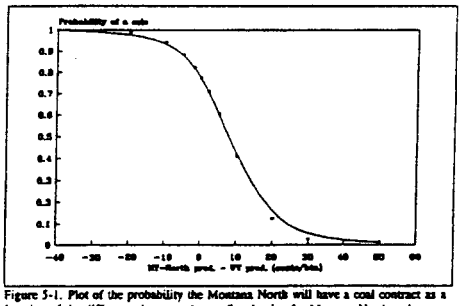

Figure 5-1. Plot of the probability the Montana North will have a coal contract as a function of the difference between the predicted price for Montana North and Wyoming coal.

An interesting general finding of this model is that the probability of holding a contract is fairly sensitive to price differences. For price differences in the range of 25 cents MBTU (or about $4.00 per ton delivered) the probability of a contract drops from 77% to below 10%.

It is also interesting to note (Figure 5-1) that at a zero predicted price differential the model predicts that Montana North will have a 77% chance of capturing a contract. This aspect of the model prediction may indicate that many of Montana North's contracts are old and thus marginally overpriced in relation to the current market for Powder River Basin coal. In a well developed and competitive market not constrained by long term contractual obligations we would expect that at a zero predicted price differential Montana North mines would have a 50% predicted probability of capturing a given contract - against an identical coal. In fact, because Wyoming coal is lower sulfur one would expect the predicted probability of a Montana contract at break-even prices to actually be below 50%.

Recalling the current delivered coal prices from the Montana and Wyoming mines (Table 4-1), this model indicates that Montana North mines could face stronger competition from Wyoming mines in the long term. Indeed, the model suggests that if all contracts were renegotiated today, Montana North might lose a portion of their current delivered tonnage if there was no change in prices. It is unknown to what extent Montana mines may be able or willing to reduce their FOB price.

Table 5-2 shows the predicted contract tonnage for Montana North mines based on the model reported in Table 5-1. The predicted quantities shown in table 5-2 were calculated as follows. For each plant in the data set a predicted probability of a contract was calculated. Those predicted probabilities less than or equal to .15 were set to zero. This was done to eliminate the artificial inflation of predicted Montana North tonnage to plants with which Wyoming had a very strong predicted cost advantage. For the remainder of the predicted probabilities (those greater then .15) the predicted probability of a contract was multiplied by the total tonnage purchased by that plant.

On average this truncated model predicts total delivered tonnage fairly well. The actual observed tonnage delivered by Montana North plants for this data sample was 15,394,075 tons (referred as the base tonnage). The model predicts (as shown in Table 5-2) that Montana North will capture 13,942,114 tons. While approximately 70% of the predicted tonnage is allocated to the Colstrip and Corette plants, tonnage is also predicted for other plants which are traditionally in the Montana North market area. A plant-by-plant analysis shows that the model underpredicts actual delivered tonnage for some plants and overpredicts for others.

An alternative method of predicting contract tonnage is to make total contracted tonnage a function of a yes-or-no (all-or-nothing) decision, rather than being based on a continuous predicted probability. Under these conditions a contract is predicted to be awarded for the total plant tonnage if the predicted probability is greater than 0.50.

Montana North mines had contract sales to eight of the 51 plants listed in Table 5-2 (Colstrip, Corette, Clay Boswell, Syl Laskin, Sherburne County, King, Presque Isle, and Columbia). The tonnage prediction based on a yes-or-no criterion predicts that Montana North will capture contracts with six of these (Colstrip, Corette, Clay Boswell, Syl Laskin, Sherburne, and King) as well as four plants which Montana North does not currently ship to (Black Dog, Alma, Weston 3, and High Bridge). The model, therefore, predicts that Montana North would not have contracts with two plants to which it DID report contract sales (Presque Isle and Columbia). This yes-or-no model somewhat overpredicts total tonnage showing 16,057,900 predicted tons, as compared with 15,394,075 observed tons. A plant-by-plant listing of predicted tonnages based on this all-or-nothing method of contract allocation is provided in Appendix C.

Table 5-2. Predicted Montana North contract tonnage based on estimated model

PLANT	Predicted Probability[1]	Predicted Tonnage[2]	Actual '92 Tonnage[3]
Alma	0.58949	364951.17	0
Ames	0.00398	0.00	0
Big Cajun No.2	0.00063	0.00	0
Black Dog	0.68849	136596.33	0
Clay Boswell	0.70251	2403298.40	1,997,400
Colstrip 1-4	0.93026	9241228.15	9,934,000
Columbia	0.31977	447669.88	1,399,975
Comanche	0.00540	0.00	0
Corette	0.80463	452871.59	749,000
Council Bluffs	0.00250	0.00	0
Daely & Spruce	0.00098	0.00	0
Edgewater	0.09033	0.00	0
Fayette	0.00112	0.00	0
Gerald Gentleman	0.00791	0.00	0
Harrington	0.00315	0.00	0
Hawthorne	0.00404	0.00	0
High Bridge	0.78684	186113.03	0
Iatan	0.00406	0.00	0
Independance	0.00198	0.00	0
Jeffrey	0.00339	0.00	0
Joppa	0.00202	0.00	0
King	0.80198	324801.30	405,000
La Cygne	0.00356	0.00	0
Labadie	0.00248	0.00	0
Louisa	0.00318	0.00	0
Monroe	0.01706	0.00	0
Muskogee	0.00222	0.00	0
Nearman Creek	0.00407	0.00	0
Nebraska City	0.00602	0.00	0
North Omaha	0.00530	0.00	0
Oklaunion	0.00240	0.00	0
Ottumwa	0.00366	0.00	0
Pawnee	0.00587	0.00	0
Pleasant Prairie	0.09770	0.00	0
Prairie Creek 1-4	0.01341	0.00	0
Presque Isle	0.23712	54159.31	228,400
River Rouge	0.01988	0.00	0
Riverside	0.01622	0.00	0
Rodemacher	0.00099	0.00	0
Rush Island	0.00220	0.00	0
Sheldon	0.00575	0.00	0
Sherburne County	0.76441	628494.57	822,300
Sherburne County 3	0.76441	151352.38	198,000
Sooner	0.00235	0.00	0
St Clair	0.01216	0.00	0
Sutherland	0.00333	0.00	0
Syl Laskin	0.78010	50784.62	65,100
W. A. Parish	0.00111	0.00	0
Weston 3	0.60447	499893.23	0
White Bluff	0.00152	0.00	0
Wyodak	0.01122	0.00	0
Total tonnages		13,942,114	15,394,075

[1] Predicted probability that a Montana North mine will have a contract with the specific plant.
[2] Total sample 1992 contract quantity, in tons per year, of Montana North and Wyoming coal, burned by this plant.
[3] The total predicted Montana North contract tonnage to the plant.

Given that the estimated model provides a reasonably good fit to the current set of contracts, we used the model in the remainder of this section to predict the effect of a change in delivered prices for Wyoming coal due to the proposed TRR extension. We report results for both a continuous expected tonnage interpretation as well as for an either/or contract prediction interpretation of the model.

The use of the Tongue River Railroad as an alternative shipping route for Wyoming coal traveling to the upper midwest would result in decreased transportation costs and could therefore result in a decreased price being charged utilities for Wyoming coal. Table 5-3 shows the predicted tonnages and net predicted decreases in tonnages under differing assumptions regarding rail cost savings. Section (A) of Table 5-3 shows predicted tonnages based on the assumption that transportation distance is cut by 128 miles for Wyoming mines and all of the cost savings associated with this reduction would be passed on to the utilities in the form of reduced delivered prices. The predicted tonnage reductions are presented for three alternative rail rates: 1.0, 1.2, and 1.4 cents per ton mile. Section (B) of Table 5-3 shows predicted tonnage reductions based on the assumption that 50% of transportation cost savings are passed on to utilities and 50% are retained by the railroads. Finally, for the sake of completeness, section (C) of Table 5-3 shows that if all cost savings are captured by the railroads, and none is therefore passed on, there is no predicted change in tonnage.

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Table 5-3 Predicted decreases in coal contract tonnage shipped from Rosebud County mines resulting from the TRR extension, under alternative rail rate and utility savings assumptions.

Rail rate assumption	Predicted Base Tonnage	Predicted Montana tonnage with TRR	Net decrease Montana (Tons) for sample
(A) All rail savings are passed on to utilities			
1.0 cents per ton mile	13,942,114	10,451,351	3,490,763
1.2 cents per ton mile	13,942,114	9,663,163	4,278,951
1.4 cents per ton mile	13,942,114	8,944,162	4,997,952
(B) 50% of rail savings are passed on to utilities and 50% are captured by railroads			
1.0 cents per ton mile	13,942,114	12,375,566	1,566,548
1.2 cents per ton mile	13,942,114	12,018,442	1,923,672
1.4 cents per ton mile	13,942,114	11,719,198	2,222,916
(C) 100% of rail savings are captured by railroads			
All rail rates	13,942,114	13,942,114	0

Table 5-3 shows that for cases where some cost savings are passed on to utilities there would be a predicted net loss in contract tonnage for Montana North mines of between 1.56 and 4.99 million tons per year.

Table 5-4 presents the predicted changes in Montana North contract tonnages for the all/or nothing model of contracting behavior.

Table 5-4. Predicted decreases in coal contract tonnage shipped from Rosebud County mines resulting from the TRR extension, under alternative rail rate and utility savings assumptions based on the assumption of all-or-nothing contracting behavior.

Rail rate assumption	Predicted Base Tonnage	Predicted Montana tonnage with TRR	Net decrease Montana (Tons) for sample
(A) All rail savings are passed on to utilities			
1.0 cents per ton mile	16,057,900	10,404,100	5,653,800
1.2 cents per ton mile	16,057,900	9,934,000	6,123,900
1.4 cents per ton mile	16,057,900	9,934,000	6,123,900
(B) 50% of rail savings are passed on to utilities and 50% are captured by railroads			
1.0 cents per ton mile	16,057,900	13,862,800	2,195,100
1.2 cents per ton mile	16,057,900	13,862,800	2,195,100
1.4 cents per ton mile	16,057,900	13,664,400	2,393,500
(C) 100% of rail savings are captured by railroads			
All rail rates	16,057,900	16,057,900	0

Table 5-4 shows that based on the all-or-nothing model of contracting behavior (where Montana North mines having a greater than 50% probability of capturing a contract were assigned the entire tonnage for that plant, and those with a less than 50% probability were assigned no tonnage). The predicted decreases in contract tonnages from Montana North mines tend to be greater than those predicted in Table 5-3. The predicted annual tonnage

decreases are between 2.2 and 6.1 million tons per year. The more conservative Table 5-3 estimated tonnage reductions were used for the following discussion of predicted changes in employment, income, and tax revenue. It is important to note, however, that both models show a potential for large contract tonnage losses for Rosebud County mines.

5.4 Predicted changes in employment, income, and tax revenue

The reduction of coal deliveries from Rosebud County mines resulting from the Tongue River Railroad use would result in changes in employment, income, and state and county tax revenues. The range of assumptions concerning BN's behavior and likely future rail rates used in this analysis necessitate reporting a general range of probable impacts on employment and income. It is beyond the scope of this analysis to investigate the possible range of impacts given the variability of the estimated model parameters. Such an analysis would indicate that impacts may be as low as zero or larger than the most probable range reported below.

Based on statistics published by the Montana Coal Council (1991), one job in coal mining in Rosebud County is roughly responsible for the production of 35,000 tons of coal per year. These coal mining jobs are, in turn, each compensated an average of $40,000 per year (gross payroll) - also according to the Montana Coal Council, 1991. Based on these averages, it is estimated that Rosebud County coal mining job losses of between 45 and 143 jobs could result from the use of the alternative transportation route provided by the Tongue River Railroad extension. This range is, of course, based on the assumption of a 50% to 100% pass through of potential savings in transportation costs by BN. This job loss translates into a projected loss in gross payroll of between 1.80 and 5.72 million dollars. With the multiplier effect, the impact on the local economy would be several times larger than this range. The major revenue impact which the state of Montana would feel from the predicted tonnage reductions would be from lost coal severance and gross proceeds tax receipts. Based on a 1992 estimated coal mine mouth contract price of $6.92 per ton, the estimated lost severance and gross proceeds tax revenue associated with a 1.56 to 4.99 million ton reduction in production would be roughly between 2.1 and 6.9 million dollars per year. Additional substantial losses would include individual income tax revenues to the state, and royalties paid to state and tribal agencies. Less predictable would be the effect on railroad employment. While there would be increased employment on the new Tongue River Railroad line, there would be an associated loss in employment for Burlington Northern, which has traditionally carried coal traveling along the northern route to the upper midwest market. On net one would expect a decrease in rail employment due to fewer ton-miles being realized in Montana.

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Appendix A. 1992 and January - June 1993 deliveries from Wyoming Powder River Basin Mines.

SOURCE=AMAX BELLE AYR/EAGLE BUTTE

OBS	POWER	PLANT	TOTQUANT
1	Dairyland Power Cooperative	Alma	619100
2	Dairyland Power Cooperative	Alma	331100
3	Detroit Edison Co	Monroe	248000
4	Detroit Edison Co	River Rouge	11000
5	Fremont Dept of Public Utilities	Wright	147300
6	Indiana Michigan Power (AEP)	Rockport	733500
7	Interstate Power	Lansing	556400
8	Iowa Southern Utilities	Ottumwa	21600
9	Kansas City Power and Light	La Cygne	2566400
10	Kansas Power & Light	Jeffrey	3806591
11	Midwest Power Inc.	Council Bluffs	1709000
12	Midwest Power Inc.	Council Bluffs	1090900
13	Nebraska Public Power System	Gerald Gentleman	72680
14	Northern Indiana Public Service	Michigan City	40500
15	Northern Indiana Public Service	Mitchell	146900
16	Oklahoma Gas and Electric	Muskogee	576095
17	Omaha Public Power District	Nebraska City	992700
18	Omaha Public Power District	North Omaha	11200
19	PacifiCorp	Dave Johnston	177000
20	Public Service Co of Colorado	Comanche	2063740
21	Public Service Co of Colorado	Pawnee	1862880
22	Southwestern Electric Power(CSW)	Flint Creek	1189000
23	Southwestern Electric Power(CSW)	Flint Creek	282000
24	Southwestern Electric Power(CSW)	Welsh Station	1673000
25	Southwestern Electric Power(CSW)	Welsh Station	1307000
26	West Texas Utilities (CSW)	Oklaunion	280000
27	Wisconsin Power and Light	Columbia	255343

SOURCE=ANTELOPE

OBS	POWER	PLANT	TOTQUANT
28	Northern States Power	Black Dog	8400
29	Northern States Power	Black Dog	2600
30	Wisconsin Power and Light	Edgewater	60138

SOURCE=ARCO BLK THUNDER/COAL CK.

OBS	POWER	PLANT	TOTQUANT
31	Commonwealth Edison	Waukegan	55000
32	Detroit Edison Co	Monroe	309000
33	Detroit Edison Co	Monroe	62000
34	Detroit Edison Co	River Rouge	6000

SOURCE=ARCO BLK THUNDER/COAL CK. (continued)

OBS	POWER	PLANT	TOTQUANT
35	Detroit Edison Co	St Clair	111000
36	Electric Energy	Joppa	560600
37	Fremont Dept of Public Utilities	Wright	500
38	Georgia Power (Southern Co)	Wansley	11400
39	Georgia Power (Southern Co)	Yates	200
40	Indiana-Kentucky Electric Corp	Clifty Creek	64000
41	Kansas City Power and Light	Hawthorne	12000
42	Kansas City Power and Light	Iatan	2276800
43	Kansas City Power and Light	Iatan	6000
44	Kansas City Power and Light	La Cygne	12000
45	Lower Colorado River Authority	Fayette	3609000
46	Minnesota Power	Clay Boswell	150300
47	Mississippi Power (Southern Co)	Jackson Ct-Daniel	70873
48	Missouri Public Service	Sibley	18970
49	Nebraska Public Power System	Gerald Gentleman	2963724
50	Nebraska Public Power System	Sheldon	558491
51	Northern States Power	Sherburne County	408000
52	Northern States Power	Sherburne County	598100
53	Oklahoma Gas and Electric	Muskogee	4506768
54	Oklahoma Gas and Electric	Sooner	3020564
55	Southwestern Electric Power(CSW)	Flint Creek	192000
56	Southwestern Public Service	Harrington	4301000
57	Southwestern Public Service	Tolk	3217000
58	Southwestern Public Service	Tolk	528000
59	Tennessee Valley Authority	Gallatin	71172
60	Wisconsin Power and Light	Edgewater	958409
61	Wisconsin Public Service Corp	Pulliam	173000
62	Wisconsin Public Service Corp	Weston 3	827000
63	Wisconsin Public Service Corp	Weston 3	663000

SOURCE=BUCKSKIN

OBS	POWER	PLANT	TOTQUANT
64	Basin Electric Power Coop	Laramie River 1-3	6913700
65	Cajun Electric Power Coop	Big Cajun No.2	5284970
66	City Public Service-San Antonio	Deely & Spruce	145166
67	Indiana Michigan Power (AEP)	Rockport	94300
68	Iowa Southern Utilities	Burlington	297300
69	Iowa Southern Utilities	Ottumwa	155800
70	Muscatine Power and Water	Muscatine	11126
71	Omaha Public Power District	North Omaha	503400
72	Western Farmers Electric Coop	Hugo	1419660

SOURCE=C REISS COAL

OBS	POWER	PLANT	TOTQUANT
73	Consumers Power	B. C. Cobb	13700
74	Rochester Dept Public Utilities	Silver Lake	5900
75	Rochester Dept Public Utilities	Silver Lake	130

SOURCE=CABALLO

OBS	POWER	PLANT	TOTQUANT
76	Grand River Dam Authority	GRDA 1 & 2	22915
77	Indiana Michigan Power (AEP)	Rockport	4711900
78	Indiana Michigan Power (AEP)	Rockport	153000
79	Kansas City Bd Public Utilities	Hearman Creek	336408
80	Kansas City Bd Public Utilities	Hearman Creek	11098
81	Lower Colorado River Authority	Fayette	139000
82	Midwest Power Inc.	George Neal 1-4	2472500
83	Midwest Power Inc.	George Neal 1-4	350900
84	Ohio Edison	Burger	17800
85	West Texas Utilities (CSW)	Oklaunion	2034000
86	Wisconsin Electric Power	Pleasant Prairie	2050500
87	Wisconsin Electric Power	Presque Isle	25200
88	Wisconsin Power and Light	Columbia	197091

SOURCE=CABALLO ROJO

OBS	POWER	PLANT	TOTQUANT
89	Electric Energy	Joppa	255300
90	Grand River Dam Authority	GRDA 1 & 2	1021421
91	Hastings Utilities	Hastings	49900
92	Hastings Utilities	Hastings	16600
93	Iowa Electric Light and Power	Prairie Creek 1-4	132000
94	Iowa Electric Light and Power	Prairie Creek 1-4	99000
95	Iowa Electric Light and Power	Sutherland	133000
96	Kansas City Power and Light	La Cygne	104000
97	Kansas City Power and Light	Montrose	739500
98	Northern Indiana Public Service	Mitchell	218200
99	Ohio Edison	Burger	7300
100	PacifiCorp	Dave Johnston	400000
101	Sunflower Electric Power Corp	H...omb Unit #1	1256848
102	West Texas Utilities (CSW)	Oklaunion	362000
103	Wisconsin Electric Power	Pleasant Prairie	2387700
104	Wisconsin Power and Light	Columbia	155916

SOURCE=COAL NETWORK

OBS	POWER	PLANT	TOTQUANT
105	Electric Energy	Joppa	123400

SOURCE=CORDERO

OBS	POWER	PLANT	TOTQUANT
106	City Public Service-San Antonio	Deely & Spruce	1184100
107	Detroit Edison Co	Monroe	241000
108	Detroit Edison Co	River Rouge	22000
109	Grand Island Utilities	Platte	275237
110	Iowa Southern Utilities	Ottumwa	1658800
111	Iowa-Illinois Gas and Electric	Louisa	1587000
112	Iowa-Illinois Gas and Electric	Riverside	44000
113	Kansas Power & Light	Jeffrey	2011479
114	Lower Colorado River Authority	Fayette	1299000
115	Midwest Power Inc.	Council Bluffs	35900
116	Midwest Power Inc.	George Neal 1-4	1414200
117	Minnesota Power	Clay Boswell	148100
118	Oklahoma Gas and Electric	Sooner	603950
119	PacifiCorp	Dave Johnston	836000
120	West Texas Utilities (CSW)	Oklaunion	64000

SOURCE=KERR MCGEE CLOVIS/JACOBS RNCH

OBS	POWER	PLANT	TOTQUANT
121	Arkansas Power & Light Co	Independence	24080
122	Arkansas Power & Light Co	White Bluff	4585146
123	Cajun Electric Power Coop	Big Cajun No.2	58720
124	Central Louisiana Electric	Rodemacher	1870000
125	Consumers Power	J. C. Weadock	57800
126	Consumers Power	J. H. Campbell	11400
127	Gulf States Utilities	Roy S. Nelson	3249000
128	Houston Lighting and Power	W. A. Parish	5005500
129	Indiana Michigan Power (AEP)	Rockport	623500
130	Public Serv Co of Oklahoma (CSW)	Northeast	2970000
131	Union Electric	Labadie	38000
132	Union Electric	Rush Island	384000
133	Union Electric	Sioux	131000

SOURCE=NORTH ANTELOPE

OBS	POWER	PLANT	TOTQUANT
134	Arkansas Power & Light Co	Independence	4989938
135	Arkansas Power & Light Co	White Bluff	367541
136	Grand River Dam Authority	GRDA 1 & 2	22547
137	Indiana Michigan Power (AEP)	Rockport	181700
138	Kansas City Power and Light	Hawthorne	1099200
139	Kansas City Power and Light	Hawthorne	148200
140	Kansas City Power and Light	Iatan	82000
141	Kansas City Power and Light	Montrose	99800
142	Northern States Power	Black Dog	190000
143	Northern States Power	Black Dog	68200
144	Northern States Power	High Bridge	4600
145	Northern States Power	King	405000
146	Northern States Power	King	329000
147	Northern States Power	Riverside	7300
148	Northern States Power	Sherburne County	58600
149	Northern States Power	Sherburne County	128300

SOURCE=RAWHIDE

OBS	POWER	PLANT	TOTQUANT
150	Grand River Dam Authority	GRDA 1 & 2	1815524
151	Iowa-Illinois Gas and Electric	Louisa	213000
152	Kansas City Bd Public Utilities	Hearman Creek	535456
153	Midwest Power Inc.	Council Bluffs	23300
154	Midwest Power Inc.	George Neal 1-4	64700
155	Omaha Public Power District	Nebraska City	743400
156	Omaha Public Power District	North Omaha	1077800

SOURCE=ROCHELLE

OBS	POWER	PLANT	TOTQUANT
157	Ames, City of	Ames	155750
158	Associated Electric Coop	Thomas Hill	116100
159	Commonwealth Edison	Fisk	68000
160	Commonwealth Edison	Joliet	57000
161	Consumers Power	B. C. Cobb	22400
162	Consumers Power	J. C. Weadock	46800
163	Consumers Power	J. H. Campbell	46900
164	Detroit Edison Co	Monroe	411000
165	Detroit Edison Co	Monroe	420000
166	Detroit Edison Co	River Rouge	50000
167	Detroit Edison Co	River Rouge	84000

SOURCE=ROCHELLE
(continued)

OBS	POWER	PLANT	TOTQUANT
168	Empire Dist Electric	Asbury	790741
169	Empire Dist Electric	Riverton	179864
170	Grand River Dam Authority	GRDA 1 & 2	588191
171	Hastings Utilities	Hastings	94700
172	Illinois Power	Baldwin	93314
173	Indiana Michigan Power (AEP)	Rockport	2776300
174	Kansas City Bd Public Utilities	Hearman Creek	11082
175	Midwest Power Inc.	George Neal 1-4	152200
176	Muscatine Power and Water	Muscatine	11257
177	Nebraska Public Power System	Gerald Gentleman	146444
178	Northern States Power	High Bridge	242700
179	Northern States Power	High Bridge	220800
180	Northern States Power	Riverside	389700
181	Northern States Power	Riverside	431900
182	Northern States Power	Sherburne County	1564900
183	Northern States Power	Sherburne County	814300
184	Ohio Edison	Burger	23700
185	PacifiCorp	Dave Johnston	8000
186	Tacoma Public Utilities	Steam No.2	2050
187	Tampa Electric	Transfer Facility	12281
188	Union Electric	Labadie	1784000
189	Union Electric	Labadie	679000
190	Union Electric	Rush Island	115000
191	West Texas Utilities (CSW)	Oklaunion	138000
192	Wisconsin Power and Light	Columbia	1345638
193	Wisconsin Power and Light	Edgewater	304598
194	Wisconsin Power and Light	Nelson Dewey	55405

SOURCE=THOMAS COAL CO OLD HICKORY

OBS	POWER	PLANT	TOTQUANT
195	Southwestern Public Service	Tolk	138000
196	Southwestern Public Service	Tolk	84000

SOURCE=UTILITY FUELS

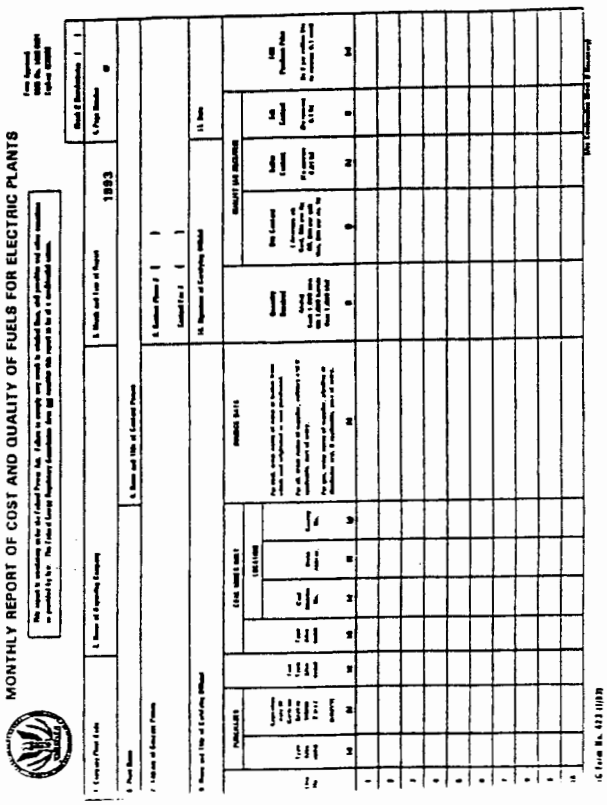
OBS	POWER	PLANT	TOTQUANT
197	Houston Lighting and Power	W. A. Parish	2169500

SOURCE=UTILITY FUELS TEXAS

OBS	POWER	PLANT	TOTQUANT
198	Houston Lighting and Power	W. A. Parish	2364700

SOURCE=VENTURE COAL

OBS	POWER	PLANT	TOTQUANT
199	Consumers Power	B. C. Cobb	260000
200	Consumers Power	B. C. Cobb	63100
201	Consumers Power	J. C. Weadock	78200



September 7, 1993

FERC 423 Data On Diskette

The diskette contains an ASCII flat file with layout as shown below.

Flat File name: F423yrYY.txt

Field Name	Positions		Length	Field Type
	From	Thru		
Year	1	2	2	N
Month	3	4	2	N
Company Code	5	10	6	N
Company Name	11	42	32	A
Plant Code	43	46	4	N
Plant Name	47	64	18	A
Contract Type	65	66	2	A
Expiration Date Month	67	68	2	N
Blank or "/"	69	69	1	A
Expiration Date Year	70	71	2	N
Fuel Type	72	74	3	A
Mine Type	75	77	3	A
Coal District	78	79	2	N
State	80	81	2	A
County	82	84	3	N
Source Name	85	124	40	A
Quantity	125	132	8	N
Btu Content	133	139	7	N
Sulfur Content	140	143	4	N
Ash Content	144	148	5	N
Cost	149	154	6	N

Appendix C. Predicted Montana North contract tonnages based on a yes-or-no contract tonnage award criterion

Predicted Montana North contract tonnage based on the all-or-nothing contracting assumption applied to the estimated model

PLANT	Predicted Probability[1]	Predicted Tonnage[2]	Actual '92 Tonnage[3]
Alma	0.58949	619000.00	0
Ames	0.00398	0.00	0
Big Cajun No.2	0.00043	0.00	0
Black Dog	0.68849	198400.00	0
Clay Boswell	0.70251	1997400.00	1,997,400
Colstrip 1-4	0.93026	9934000.00	9,934,000
Columbia	0.31977	0.00	1,399,975
Comanche	0.00540	0.00	0
Corette	0.60463	749000.00	749,000
Council Bluffs	0.00250	0.00	0
Deely & Spruce	0.00098	0.00	0
Edgewater	0.09033	0.00	0
Fayette	0.00112	0.00	0
Gerald Gentleman	0.00791	0.00	0
Harrington	0.00315	0.00	0
Hawthorne	0.00404	0.00	0
High Bridge	0.78684	242700.00	0
Iatan	0.00406	0.00	0
Independence	0.00198	0.00	0
Jeffrey	0.00339	0.00	0
Joppa	0.00202	0.00	0
King	0.80198	405000.00	405,000
La Cygne	0.00356	0.00	0
Labadie	0.00248	0.00	0
Lowlee	0.00318	0.00	0
Monroe	0.01706	0.00	0
Muskogee	0.00222	0.00	0
Nearman Creek	0.00407	0.00	0
Nebraska City	0.00602	0.00	0
North Omaha	0.00530	0.00	0
Oklaunion	0.00240	0.00	0
Ottumwe	0.00366	0.00	0
Pawnee	0.00587	0.00	0
Pleasant Prairie	0.09770	0.00	0
Prairie Creek 1-4	0.01341	0.00	0
Presque Isle	0.23712	0.00	228,400
River Rouge	0.01988	0.00	0
Riverside	0.01622	0.00	0
Rodemacher	0.00099	0.00	0
Rush Island	0.00220	0.00	0
Sheldon	0.00575	0.00	0
Sherburne County	0.76441	822200.00	822,200
Sherburne County 3	0.76441	198000.00	198,000
Sooner	0.00235	0.00	0
St Clair	0.01336	0.00	0
Sutherland	0.00333	0.00	0
Syl Laskin	0.78010	65100.00	65,100
W. A. Parish	0.00111	0.00	0
Weston 3	0.60467	827000.00	0
[illegible]te Bluff	0.00152	0.00	0
Wyodak	0.01122	0.00	0
Total tonnages		16,057,900	15,394,075

1 Predicted probability that a Montana North mine will have a contract with the specific plant.
2 Total sample 1992 contract quantity, in tons per year, of Montana North and Wyoming coal, burned by this plant.
3 The total predicted Montana North contract tonnage to the plant.

Exhibit C

Railroad proposal isn't all rosy

Tongue River Railroad would subtract, not add, jobs in Miles City area

YOUR TURN

Paul Schmeling

NPRC offers 1,000 signatures against TRR

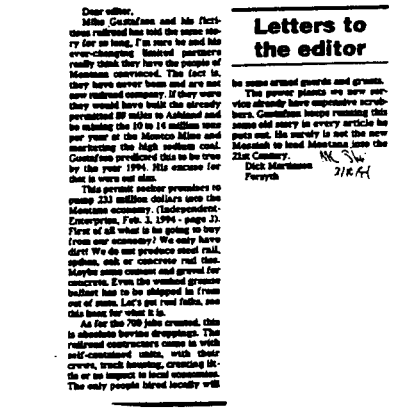
Opponents of railroad turn out

Opposition mounting against TR Railroad

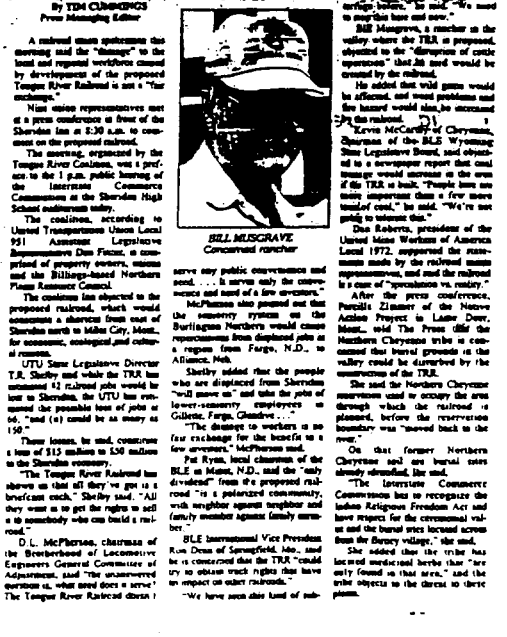
Groups opposing railroad proposal

TRR won't be state's eco

Letters to the editor



Opponents argue against rail line in Montana's Forsyth, Lame Deer



UTU officials claim TRR would hurt jobs in area

SEP-16-92 WED 10:46 SHERIDAN PRESS P.01

Local hearing pooh-poohs TR choo-choo

By JIM CUMMINGS
Press Managing Editor

If the public hearing Friday afternoon is any indication, the railroad proposal now before the Tongue River Railroad.

Forty people who signed up to speak at the hearing conducted by Interstate Commerce Commission Administrative Law Judge Paul Cross, in the Sheridan High School Auditorium

No one spoke in favor of the proposed railroad, and most of the speakers carried a thicker caliber of local economic boom done by the deployment of services [illegible] provided by Burlington Northern Railroad or otherwise] boom done by "non-Coal development" in the prime Tongue River Valley.

More than 100 people attended the hearing Friday, which was the [illegible] hearing in Montana-Wyoming this week.

No one spoke in favor of the TRR as N. Mountain town are friends or Lone Dove during hearings Wednesday, but all of the people [illegible] the railroad at Thursday's hearing in Miles City, Mont.

At issue is a permit application for the TRR to build 42 miles of railroad from approximately the Decker Coal Mine to Ashland, Mont.

TRR already has received a permit from the ICC to build from Ashland to Miles City. The proposed line would forge a link for coal laden freight trains, bypassing the Sheridan-Huntley Montana.

The TRR has estimated the route would displace 42 Burlington Northern [illegible] and United Transportation Union Local 951 President Randy Knutson said Friday that the TRR estimates is "conservative and unrealistic," and declined to "downplay the impact" of the railroad.

Union representatives have estimated that local job loss at 56, and UTU State Legislative Director F.R. Shelby said Friday morning that the loss "could be as many as 130."

Knutson said the eventual impact to the TRR "could jeopardize the entire Sheridan operation," since coal traffic comprises 66 percent of all train traffic originating in Sheridan.

"The appeal of the quality of life here gives it allegiance in the absence of excellent development," Knutson said.

Other impacts, pointed out by speakers, included [illegible] ranching operations, displaced [illegible] property values in [illegible] wildlife habitats including that of the peregrine falcon and black-footed ferret, and the historical and Native Americans cultural aspects of the valley.

A Draft Environmental Impact Statement on the TRR was prepared and released July 17 by the ICC Office of Economics Section of Energy and Environment, and the public comment period on the draft closes Sept. 21.

Cross told The Press that the next phase of the TRR application places the ball in court of the ICC Energy and Environment Section.

He said the ICC could call for further study, or for the completion of a final EIS.

He said he was unsure what would comprise the next phase, adding that his job with the ICC was to facilitate information that the ICC could consider in deciding the fate of the TRR application.

5B

NC Stkd

Thursday, August 20, 1992 / PAGE 3

TRR proposal shot down in first hearings

[illegible]

Mine workers, opposes railroad

[illegible]

Miners, ranchers, unions oppose proposed Tongue River Railroad

[illegible]

Crows oppose railroad

[illegible]

to build in Baker - page 3

be Ruth baseball - page 6

er-review

VOL XXX NO. 46 - Sunday, June 7, 1992 - Glendive, Montana - 50 Cents

Groups opposing railroad proposal

By BOB BUSH
Review-Herald Staff Writer

[illegible]

THE NEWS RECORD

JUN 19 1992

Large opposition mounts campaign against railroad

More than 1,000 sign petition to fight new rail line

By The Associated Press

A conservation group has amassed more than 1,000 letters of protest to a proposed Tongue River Railroad that would haul coal from mines at Decker, Mont., to Midwestern markets.

The Northern Plains Resource Council, a Billings, Mont., organization that represents some 1,500 mostly ranching and farming families concerned about over development on rural lands, sent the letters of opposition to the Interstate Commerce Commission, which is charged with permitting the railroad.

The ICC on Thursday received the verified, notarized letters "by the truckload," according to Russ Brown, an NPRC staff consultant.

Most letters were from Montana residents, including letters written by Burlington Northern Railroad workers, ranchers, farmers, county commissioners and state representatives from both Wyoming and Montana.

Many were form letters, Brown said Thursday.

Coal currently is hauled from the Decker mines by BN trains to Sheridan, Wyo., and then back north over Montana. The proposed Tongue River line would run directly from Decker to Miles City.

The line would cut the total rail haul of coal from Decker to Upper Midwest markets by 130 to 180 miles. NPRC maintains the Tongue River line would make a cheaper to ship coal from northern Wyoming's Powder River Basin than Montana coal.

The $217 million, 122-mile line is scheduled for completion in 1997.

Although railroad developers say the line would give Montana's low-sulfur coal a competitive edge, NPRC members say Gillette, Wyo., coal miners would be the big winners and Montana would lose.

"You're looking at a speculative rail venture that would benefit Gillette coal and possibly save Midwestern utility customers a few pennies on their utility bills," Brown said.

If built, the rail would mean "a major devastation to ranchers in the valley, a loss of jobs, there's no indication the railroad would hire union labor, a devastation on farming coal mines to the west of Musselshell and a severe socioeconomic impact on those areas where the line would be built," Brown said.

Montana State Rep. Arlene Ann Becker of Billings submitted a letter saying she lost is not in the line's favor of her town.

"A line ... if built would move mostly Wyoming coal and would cause a net loss of jobs, taxes and revenue because of reduced upstream or possible shutdown of mining as the already permitted and operating mines at Western Energy and Peabody and Westmoreland Lazy Creek Mine," she wrote.

The ICC approved an 81-mile line in 1986 from Ridge City to Ashland. The company is now seeking a permit for a 41-mile extension to the Decker area. The 81-mile line has yet to be built.

John Quarles, President of Western Resources Intl., in Billings, which has a financial interest in the Tongue River line, said the resource council is off base.

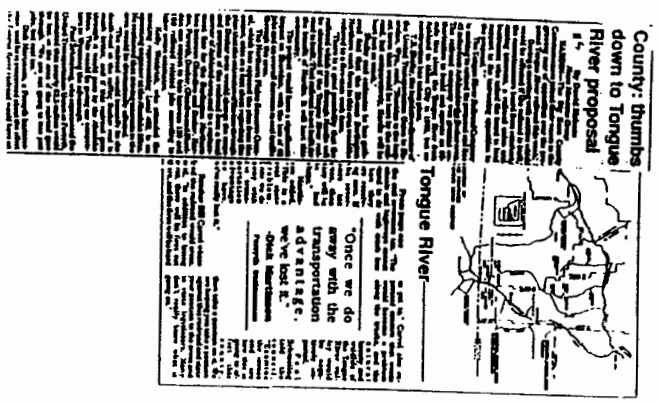
"If no action is taken, we will see no growth in terms of jobs and prosperity and we could see reductions, meaning a loss of railroad and mining jobs," Quarles said.

Express opinions on Tongue River RR

For the past 18 years I have been employed by the BNRR as a brakeman and for the last three years as a locomotive engineer. I am writing to share my concerns and to urge all Montanans to get involved in opposing the proposed Tongue River Railroad 41-mile "extension" currently being reviewed for a permit by the Interstate Commerce Commission.

The permit is supposed to be based on public environment and economy. Yet, an extension is being requested from the original Tongue River Railroad which was permitted in 1986, supposedly based on the same criteria, but which has never had a shovel turned in construction or a construction signal for shipping. No where in any of the documents submitted by the TRR is there any clear presentation of need for this railroad. Four Supermajorthan coal mines in Wyoming would benefit by getting a shortcut through Montana. Montana on the other hand would have a lot of railroad workers like myself, a lot of miners from existing mines now served by the BNRR, and a loss of taxes, both from coal tax revenue and personal and property taxes as workers are forced to move to look for jobs. The only "necessity" for this project seems to come from the backers who have a need to make this project viable looking to big investors. We certainly need economic development in Eastern and all of Montana, but at what cost?

Pat A. Minehart
Glendive



County: thumbs down to Tongue River proposal

Letters to the editor

Extending TRR would devastate state coal industry

Dear editor,

This letter is to express my opposition to the proposed Tongue River Railroad (TRR) 41-mile extension. It seems that these elected officials who feel the TRR will be good for Montana just don't get it! They just don't see the problems that such a railroad will cause the Montana coal industry.

Consider: the utilities of the Midwest buy coal at the lowest price they can negotiate. The TRR will open Wyoming coal markets that Montana now controls. Our competitive edge has been that Montana coal mines are closer to the markets, thus we can sell the coal at competitive prices. The construction of the TRR extension opens Wyoming markets and takes away Montana's competitive edge.

Consider: Montana coal producers last year paid close to $10 million in coal severance taxes. If we lose our coal markets to Wyoming, we lose the coal severance tax. Who will pay for these lost tax revenues?

Consider: the loss of good paying jobs! Railroaders, coal miners and related service industries will lose jobs. This hurts the state of Montana in lost income and related taxes as well as the economics of the railroad and mining towns of the coal producing region.

Consider: if the Montana coal industry fades, it will directly hurt our educational system. The loss of taxes paid to the state for equalization would be another "Big Hit" for an educational system already hurting.

Does the construction of a railroad that costs jobs, hurts our economy, cripples our educational system, ruins agricultural productivity and increases the productivity of another state at a cost of millions to Montana meet the criteria of being needed and necessary?

If you care about your state and are interested in Montana continuing to have a strong coal industry, you can help. Join the fight and let your governor, state legislators, and congressmen know how you feel. Tell them No, No, No, to the Tongue River Railroad extension!

Gene H. Kurtz
Forsyth

TRR would increase taxes, destroy community

Dear editor,

I am the fourth generation of my family to live and work on our ranch in Birney, Montana.

I am opposed to the Tongue River Railroad. If this railroad is built, it will increase our taxes and destroy our community.

This proposed railroad is about greed and ignorance and I refuse to support it for the generations that have been and for the ones to come.

Mary Alderson
Bosse Brothers Ranch
Birney

Stardust

Tongue RR raises worries in Sheridan

SHERIDAN, Wyo. (AP) — Sheridan County has yet to take a position on the proposed Tongue River Railroad, but at least one commissioner is leaning against the idea.

Coal trains from Decker and Spring Creek Coal in Montana that currently travel through Sheridan and back into Montana are taxed by the state of Wyoming, said Commissioner Ken Kerns. The proposed railroad would bypass Sheridan and trains would take a more direct route from the coal mines to Miles City, Mont., on their way to the Upper Midwest outlets.

"That would definitely have an impact on the taxable valuation of Sheridan County," he said. "I don't know how large the impact will be."

Kerns was among 70 people last week in Sheridan who attended a "town meeting" organized by Montana-based Northern Plains Resource Council and local Burlington Northern railroad unions opposed to the Tongue River Railroad.

Bob Nichols, assistant chairman of Brotherhood of Maintenance of Way Employees in Sheridan, said 40 union jobs could be lost if the railroad is built. Don Flater, United Transportation Union spokesman, estimated up to 100 railroad jobs would be moved to other communities.

If the line is built, Flater said, "My job won't be in Sheridan anymore. My job may be in Gillette, Casper, Alliance, Neb., or Grayhull. I don't know where my job will be, but I don't want to leave Sheridan."

Wally McRae, who ranches in the Tongue River Valley where the line is proposed, said the Gillette coal area will reap the greatest benefits. It would have a new avenue to market coal to the Upper Midwest, as the line would cut the haul to those states by about 15 percent.

Several people, however, suggested the new line might save jobs because of increased competition.

"I don't know if the railroad can be portrayed as all negative," said Rod Smith, a welder at Spring Creek Coal.

Wasco Resources and TharmRes, a subsidiary of Washington Energy Co. of Seattle, are proposing the 122-mile railroad. The Interstate Commerce Commission has set Thursday as the deadline to submit verified statements in opposition to the railroad's permit application.

Unions, environmental groups line up against Tongue River Railroad

MC Star, 6/19/92 p 1

SHERIDAN, Wyo. (AP) — Three railroad unions and an environmental group are trying to form a coalition opposing the proposed Tongue River Railroad.

Don Flater of United Transportation Union Local 951 said the groups plan a "town meeting" Wednesday in Sheridan on the proposed line that he fears could jeopardize up to 100 Burlington Northern Railroad jobs in Sheridan.

The 122-mile Tongue River Railroad would cut 15 percent off the total rail haul from coal mines near Decker, Mont., to Miles City, Mont. It would be a direct line instead of routing through Sheridan.

The Interstate Commerce Commission has granted the railroad a permit for the 81 miles from Miles City to Ashland, Mont., and the railroad now is seeking a permit for an extension from Ashland to Decker.

Developers of the railroad believe the line could encourage new mines north of Sheridan, opening up areas holding more than three billion tons of mineable coal.

Flater agrees the railroad could be an economic boon, but said the "economic development would center around Gillette, Miles City and Dickinson (N.D.)."

Sheridan could be hit with a $21 million economic loss as coal shipments from Gillette and Decker Coal could bypass Sheridan, he said.

"Their intentions aren't specific, which leaves everything open for speculation," Flater said.

Joining UTU in opposing the line are the Brotherhood of Locomotive Engineers and the Brotherhood of Maintenance of Way Employees. The three unions represent about 300 Sheridan-based workers. The Montana-based Northern Plains Resource Council also has opposed the line.

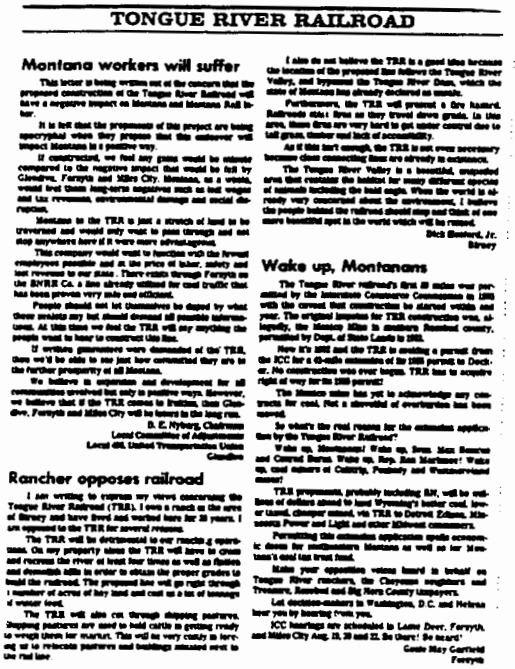
The deadline to submit verified statements in opposition to the railroad's ICC application had been set at June 18, although the Northern Plains Resource Council has requested an extension.

18-44

Railroad's a monster in coal country

Letters to the editor

Umpire's rebuke of youths is inexcusable



TONGUE RIVER RAILROAD

Montana workers will suffer

Rancher opposes railroad

Wake up, Montanans

Tongue River Railroad Extension

WHEREAS, The Tongue River Railroad Company has filed an application with the Interstate Commerce Commission for a 41-mile extension of its existing permitted (but unbuilt) railroad, from Ashland to Decker, Montana; and

WHEREAS, the resuming railroad from Miles City to Decker would "shortcut" the existing railroad routes through Hardin and from Colstrip, eliminating the advantage in transportation costs which Colstrip-area mines currently have over Wyoming mines in midwest markets; and

WHEREAS, this could reduce Montana coal mine production, employment, and coal tax revenue, including revenue to Montana's Coal Tax Trust Fund; and

WHEREAS, completion of the Tongue River Railroad could reduce traffic on the existing Burlington Northern lines through Hardin and from Colstrip, resulting in the loss of 120-160 jobs for train crews, clerks, maintenance and other workers in Forsyth, Glendive, and Sheridan, Wyoming; and

WHEREAS, the loss of mining and railroad jobs in Colstrip, Forsyth, Glendive, and Sheridan will result in the loss of many other jobs and small businesses in those communities; and

WHEREAS, railroad workers with seniority could be relocated from Forsyth, Glendive, and Sheridan to railroad jobs in other Montana communities, further disrupting the Montana workforce and those communities; and

WHEREAS, construction of the line will have devastating impacts on the productive and beautiful ranch land and river valley, including greatly increased ranch operating costs, loss of hay lands and prime pasture, fires, the spread of noxious weeds, and serious damage to the Tongue River fishery; and

WHEREAS, a portion of the proposed railroad route travels through sacred lands of the Northern Cheyenne Tribe, and would bisect or tear apart ancient burial grounds and religious ceremonial sites; and

WHEREAS, the Rosebud and Big Horn County Commissions, the Forsyth City Council, the Montana Superintendent of Public Instruction, the Montana Secretary of State, Montana State Senators from Jordan and Wyola, Montana State Representatives from Colstrip, Glendive, Livingston, and Billings, local mine and transportation workers' unions, the Montana State AFL-CIO and the Northern Plains Resource Council all oppose the railroad extension;

NOW THEREFORE BE IT RESOLVED, that the Montana Democratic Party opposes the extension of the Tongue River Railroad Company's proposed rail line.

Forsyth is united at ICC hearing against proposed TRR extension

Railroad not wanted

Rail line opposed

B-45

The Sheridan Press

THURSDAY JANUARY 13, 1994

Ranchers criticize proposed TRR

Railroad

Group says railroad plan threatens Tongue River

By CLAIR JOHNSON
Of the Gazette Staff

Eastern Montana's Tongue River is threatened by a proposed railroad that would destroy "miles of pristine streamside habitat and open the region to coal mining," according to American Rivers, a North American river conservation organization.

Development of the railroad would "ruin the valley as it exists today," the organization said. American Rivers on Tuesday named the Tongue River as one of its 20 threatened rivers.

The threatened section of the river flows through a landscape of sandstone cliffs and canyons from the Tongue River Reservoir, near Decker, to its confluence with the Yellowstone River near Miles City, American Rivers said. Flanked mainly by private ranches, the river and its landscape are largely undisturbed. The river also runs parallel to the Northern Cheyenne Reservation and has cultural sites important to the Northern Cheyenne.

The river provides "critical habitat for rare and sensitive fish species" and a riparian habitat that is "critical for the area's wildlife," the organization says.

Mike Gustafson, president of Wynco Resources in Billings, one of the railroad developers, said American Rivers would paint the image that the railroad will run right down the middle of the river bottom land. Not true, he said. The railroad would parallel the county road and be out of the flood plain and alluvium.

"We've done everything to minimize the impact," he said.

The idea of strip mine coal development has created concern among residents and friends of the Tongue River. The campaign against the railroad is led by the Northern Plains Resource Council.

Wally McRae, a Tongue River rancher and NPRC past president who feels almost a spiritual satisfaction from the tranquility and beauty of the river, said Tuesday he hopes the designation will get the attention of "one congressional delegation that seems to be riding the fence."

Rep. Pat Williams, D-Mont., has been helpful, McRae said. But neither Sens. Max Baucus, a Democrat, nor Conrad Burns, a Republican, seems to "really care about the water issue or the property rights issue," he said.

McRae said the railroad will harm an undisturbed area and will send Montana railroad and coal mining jobs to Wyoming. The railroad is unnecessary, he said.

The 131-mile Tongue River railroad would run from Miles City to Decker and would cross the river five times at the upper end near the reservoir.

Where the railroad crosses the river, Wynco has worked with state and federal agencies to develop mitigation plans to preserve the habitat and wildlife and to address road spillage and cleanup in the event of a train wreck, Gustafson said.

"I think we've demonstrated our environmental stewardship," he added.

If people are concerned about protecting the integrity of the Tongue River, Gustafson said, the impacts of agricultural pollutants from fertilizers, animal wastes and other practices need to be addressed as well.

A decision by the Interstate Commerce Commission on whether to permit the railroad is expected by this summer. The ICC issued a draft environmental impact statement in July 1992. In December 1993, the commission said it would issue a supplemental environmental impact statement to consider a change in the proposed route. The supplemental draft was issued in late March, and the public comment period ends May 9.

The Billings Gazette
4-20-94, p. 10A

Exhibit D

NORTH AMERICA'S MOST ENDANGERED AND THREATENED RIVERS OF 1994

American Rivers

Dedicated to Protecting and Restoring America's Rivers

American Rivers

American Rivers is dedicated to preserving and restoring North America's rivers. Since its founding in 1973, the organization has helped to preserve over 20,000 river miles through federal and state protection programs, and over 5 million acres of adjacent lands.

American Rivers program to address the growing threats to rivers and river systems in North America includes: protection of nationally significant rivers, hydropower policy reform, protection of endangered aquatic and riparian species, western water allocation and instream flows, clean water protection and enhancing urban rivers.

TABLE OF CONTENTS

THE STATE OF AMERICA'S RIVERS

While water pollution controls have reduced the amount of sewage and industrial chemicals in America's rivers, our aquatic ecosystems are in greater trouble than ever. An alarming number of aquatic species are in jeopardy, as their habitat continues to be drained, filled, channelized or in some other way altered to meet human needs. The increasing rate of loss of these species is a strong signal that our nation's rivers and streams are not healthy.

The most critical problem with rivers today is the physical and biological transformation of their watersheds. As rivers have been altered to provide water transportation, generate power, reduce flood hazards and provide water for our farms, cities and industries, their natural physical, chemical and biological processes have been damaged or destroyed.

"We don't think of ourselves as part of an ecosystem," said Dr. David Getches, a professor at the University of Colorado School of Law, "but bodies of water, and rivers in particular, have been a source of community identity and played a part in local cultures since the beginning of time. When you protect a river, you are protecting a community and a culture."[1]

Other threats to rivers range from dams that stop fish from reaching spawning areas and cut off nutrient flows to contaminated runoff that impacts water quality. As flows of water and sediment are changed or interrupted and streamside land is cleared of vegetation, the natural functions of floodplains and river channels are altered.

As riparian and aquatic habitat has been increasingly lost or altered, more than one-third of North America's fish species have become rare or extinct. Over-fishing, and competition from introduced non-native species, have contributed as well. One-fifth of the native fish species of the Western U.S. are now extinct or endangered. And the fish and other aquatic species are disappearing at a more rapid rate than land-based species.

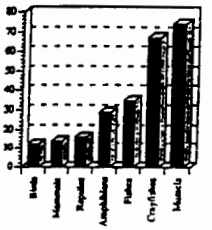
Between 1979 and 1989, 10 species of freshwater fish became extinct, and an additional 139 species have become endangered, threatened or listed as "of special concern" for their survival. In some cases, entire communities of native fish appear to be endangered:

* 106 stocks of Pacific salmon, steelhead and sea-run cutthroat are extinct and another 102 face extinction.

* Since 1933, one-fifth of the mollusks in the Tennessee River system have been lost, and 45 percent of the remaining species are endangered or seriously depleted.

* Of 30 species of native fish in Arizona, 25 are listed as threatened or endangered.

Aquatic Species in Jeopardy



Source: The Nature Conservancy, Biodiversity Network News 3, no. 3 (1990): 7.

HEALTHY RIVER SYSTEMS

American Rivers believes a three-pronged strategy is the key to protecting and restoring the nation's watersheds. First, we must protect and restore the near-stream or "riparian" zones along every river and stream. Second, we must protect and restore flow regimes that will sustain the life that depends on rivers over the long term. Finally, we must protect our headwaters, including the upper tributaries and springs.

According to Dr. David Allan, a professor of conservation biology and ecological resources at the University of Michigan, "The health of the river is telling you about more than just about the river. It is telling you the health of the entire watershed it drains. Everything that happens on the landscape in some sense impacts the health of that river."

• The Riparian Zone

"Riparian areas are really foci of biological richness," said Dr. Judy Meyer, a professor of zoology at the University of Georgia. Healthy river systems are incredibly dynamic. As nutrients, sediments and organisms are transported downstream, water and organic materials are constantly added. Most of these materials come from the surrounding terrestrial system, with the land-water boundary, known as the "riparian zone," acting as a critical filter that regulates the exchange. Riparian zones and their associated wetlands act as natural sponges, absorbing and filtering pollution and releasing floodwaters over time.

Open, sunlit streams and large floodplain rivers like the Mississippi produce much of the organic matter that is consumed within them. The decaying remains of algae and aquatic plants are major sources of nutrients. Additional nutrients are washed into the river channel during periods of high water when surrounding swamps, marshes and meadows are flooded. In contrast, small streams covered by trees receive most of their organic matter from falling leaves. This debris settles in still pools or riffles, where it is decomposed by bacteria.

"Eighty Percent of the species in the arid and semi-arid west depend on riparian areas," said Dr. Duncan Patten, a riparian expert from Arizona State University. Riparian zones provide the food and habitat for the rich diversity of aquatic and terrestrial species that are found there, many of which are found nowhere else.

When you protect a river, you are protecting a community and a culture

• Natural Flows

Although river flows are usually highly variable over the course of a year, the seasonal timing of high and low flows is fairly predictable. When rivers flood, they alter the shape of the stream, scouring new channels and inundating riverside land, depositing sediments, and building new banks and beaches. This function is as important to healthy river ecosystems as fire is for maintaining prairies. For many fish species, this flood "pulse," known as the "natural hydrograph," not only triggers spawning but also allows fish to reach seasonally inundated floodplain nursery and spawning habitat. And when rivers are dammed or the water diverted for consumptive uses, these ecosystems begin to break down.

• Protection of Headwaters

Protected headwaters function much like a trust fund, sending its proceeds in the form of clean water and nutrients downstream to recharge the system. Many of the nation's headwaters are in mountainous regions that have undergone less development than lowlands and are often in public ownership. "There is a fear, largely a false fear, that protecting water in wilderness areas will somehow rob the development potential of surrounding areas," according to Professor Getches. Watershed planning and careful stewardship of these areas by federal and state land managers is critical to maintaining these headwater "bank accounts."

THREATS TO RIVERS

Human activities have upset the delicate equilibrium within river systems. Although some form of equilibrium may ultimately be restored, it is typically less diverse, as plants and animals, which take long periods of time to adapt to changes, cannot easily adjust.

• Contaminated Run-off

Run-off from farmland flushes inorganic nutrients into the river, like phosphates and nitrates, that lead to oxygen depletion. Too much nitrate and phosphate results in algal blooms, which create great amounts of oxygen during the day. That critical oxygen is depleted when the algae die and are decomposed by bacteria and fungi at night.

Farms are also a major source of herbicides that inhibit the production of aquatic plants, and pesticides that eliminate aquatic insects, the base of the food chain, and can cause fish kills. Feedlots are also a major source of organic matter. When high levels of organic matter are introduced, oxygen is used up faster than it is being introduced into the system. Human sewage wastes also contribute nutrients that lead to oxygen depletion, and carry organisms that threaten human health.

In urban areas, fertilizers, pesticides, petroleum products and other toxics are flushed off streets, parking lots and residential lots and into our rivers and streams.

"People's image of a river is what they grew up with. My husband grew up in Los Angeles. His image is of a cement-lined channel," said Dr.

Meyer. "I think a lot of people don't have a feel for what a natural river is supposed to look like."

Despite controls on end-of-pipe releases, industry still releases millions of pounds of toxic chemicals each year that end up in rivers. Acid rain, an invisible industrial discharge, changes the natural level of acidity in many rivers and streams and has left many Eastern streams stripped of aquatic life.

Runoff from mining operations has impaired more than 12,000 river miles. Mines and mine waste piles are the source of acid mine drainage, which is toxic to fish and insect species and upsets the natural acidity of healthy rivers systems. Some streams in the West still run orange from mines abandoned a century ago.

• Dams and Diversions

Dams block fish from their habitat, eliminate flows needed for juvenile fish migration and protection from predators, and inundate prime rearing and spawning habitat with reservoirs. Dams permanently alter a river's ecosystem by changing flows, temperature and sediment carrying capacity. As the temperature of impounded water increases, the composition of plants and animals take on the character of communities normally found in warmer water, creating a greater demand for oxygen. Simultaneously, the efficiency of plants producing oxygen, and the amount of oxygen that the water can hold, are both reduced. Fluctuating water levels, temperatures and oxygen levels eliminate all but those species with the capacity to adapt.

The alteration of flow patterns — also caused by diversions, consumptive uses, and stormwater management practices — increase flood peaks, leading to changes in deposition and erosion that fill in critical backwater areas. During periods of low flow, there may be too little water to support aquatic life.

• Sedimentation

Land-use practices that have cleared riverside vegetation, and locks and dams that prevent the natural flow of rivers, have led to the accumulation of sediments in critical habitats, filling in backwaters and prematurely transforming aquatic environments into terrestrial environments. The main source of sediments is upland erosion from farmlands, but other sources include mining, logging and grazing. Sediment that was once transported downstream is now often accumulating behind locks and dams. Because it no longer receives sediment, the Mississippi River delta is slowly being lost.

Changes in flow patterns have also contributed to the excessive resuspension of sediments in the water column, reducing light penetration needed for aquatic plants, and eliminating habitat for aquatic insects. This increase in "turbidity" also interferes with fish that depend on good visibility for finding food and reproductive behavior that depends on visual cues.

These changes in sediment deposition also adversely impact the topography of the riverbed. The bottom of the river channel, known as the "hyporheic zone", hosts temporary and permanent residents that are essential to a functioning system. In shallow areas with swift waters, gravel bars and riffles provide habitat and spawning areas, especially for fish like salmon and steelhead. Organisms that live in riffles are adapted to living in swift, shallow water. These areas are often lost when sediment patterns are altered.

• Channelization

In places where the banks of streams are cleared, straightened and replaced with rocks or concrete to reduce flood hazards or to aid navigation, the natural values of associated wetlands and floodplains — controlling and filtering runoff, providing habitat and adding nutrients — are eliminated. The bottom of a stream altered to convey floodwaters or allow boat traffic offers a lower diversity of habitat for aquatic insects and for fish reproduction.

• About This Report

The purpose of this report on the most endangered and threatened rivers of 1994 is to inform the public about the numerous, ongoing threats to the rivers and streams of North America, and to create awareness of and support for local and regional efforts to protect and restore these waterways and watersheds, which are the lifelines of our aquatic ecosystems.

[1]These quotes come from members of American Rivers' Scientific and Technical Advisory Committee during a forum held last year on the "State of America's Rivers".

the basin. Since 1988, the Department of Ecology has required as an interim measure release of 30 cubic feet per second, only a trickle compared with the river's natural flow.

The fifty year, "minor part" license granted to Tacoma City Light in 1924 expired 19 years ago making it one of the oldest, if not *the* oldest, outstanding FERC project. Yet, the City of Tacoma has not acted to restore the North Fork. In the face of salmon extinctions, the complete dewatering of a river, the potential elimination of a vital estuary and the violation of the Tribe's cultural, economic and treaty rights, such inaction is unacceptable.

American Rivers is currently working with the Skokomish Indian Tribe, and a coalition of environmental groups and state and federal wildlife and fisheries agencies to modify the operation of the Cushman Hydroelectric Project. In January 1994, these groups met with the chair of FERC to discuss the Cushman Project and recommended to FERC that instream flow be increased immediately on an interim basis to 100 cubic feet per second (cfs). An increase to 100 c.f.s. would have minimal impact on Tacoma's power generation capabilities, but would partially restore fish habitat and aid in fish migration.

The story of the Skokomish River is one of complete disregard of a people's culture and the ravaging of a once productive and beautiful river.

For more information, contact:

Lorri Bodi or Katherine Ransel, American Rivers, (206) 543-7133
Vic Marsono, Skokomish Tribe, (206) 842-5386

TONGUE RIVER (MONTANA)

Flowing through the arid, rugged plains of eastern Montana, the Tongue River is threatened by a proposed railroad project that would destroy miles of pristine streamside habitat and open the region to coal mining.

The Tongue rises in Wyoming's Bighorn National Forest, where a portion of the river is eligible for the National Wild and Scenic Rivers system. The threatened section of the river, however, flows between the Tongue River Reservoir, near Decker, Montana, and its confluence with the Yellowstone River near Miles City, Montana. This section of the Tongue River runs through a landscape of sandstone cliffs and canyons. Flanked mainly by private ranches, the river and its landscape is largely undisturbed. The Tongue also runs parallel to the Northern Cheyenne Reservation. It includes sacred ceremonial sites, burial grounds and other cultural sites important to the Northern Cheyenne.

The river provides critical habitat for several rare and sensitive fish species, including Paddlefish, Shovelnose sturgeon, burbot and the sturgeon chub. A trout fishery has also established itself downstream of the Tongue River Reservoir, providing angling opportunities rare in eastern Montana. The river also provides riparian habitat that is critical for the area's wildlife, including mule deer, prong horn antelope, and numerous bird species.

The proposed 131-mile Tongue River Railroad would run parallel to the river from Miles City to Decker. It would cross the river six times, and 18 trains of coal would be carried on the rails each day. Even the promoter of the railroad concedes that train derailments are simply a matter of time.

There is currently one permitted, but not operational, strip mine near the river. Four other strip mines have been proposed for the area. The specter of strip mine coal development has created concern among residents and friends of the Tongue River.

Development of the railroad would ruin the valley as it exists today. A coalition of ranchers, Native Americans, coal miners, railroaders, small businesses and conservationists is fighting to stop the railroad. The campaign is led by the Northern Plains Resource Council (NPRC). Among other things, NPRC is a party to the administrative proceedings to approve the railroad now before the Interstate Commerce Commission (ICC). The ICC issued a draft EIS in July 1992. Then, in December 1993, the ICC issued an order stating it would issue a Supplemental EIS to consider a change in the proposed route of the railroad. The Supplemental DEIS was issued in late March. A decision by the ICC whether to permit the railroad is expected by this summer.

For more information, contact:

Tom Cassidy, American Rivers, Washington, D.C. (202) 547-6900
Teresa Erickson, Northern Plains Resource Council, Billings, MT (406) 248-1154

TONGUE RIVER RAILROAD COMPANY
P.O. Box 1181
Billings, Montana 59103
(406) 252-5696

May 9, 1994

Ms. Elaine Kaiser, Chief
Section of Environmental Analysis
Interstate Commerce Commission
12th and Constitution Ave.
Washington, DC 20423

Re: Tongue River Railroad Company Comments on "Supplemental to Draft Environmental Impact Statement", Finance Docket No. 30186 (Sub.No. 2)

Dear Ms. Kaiser:

The Tongue River Railroad Company (TRRC) has reviewed the recently filed "Supplement to Draft Environmental Impact Statement" (SDEIS) for the proposed 40 mile Extension of the company's certificated rail line in southeastern Montana. The TRRC is in general agreement with your findings that its proposed line is environmentally preferable to the Four Mile Creek Alternative. As you note in the SDEIS (pp. 13-18), the TRRC has adjusted its initial proposal to reduce possible impacts to the Tongue River Reservoir. In addition, after consultation with various state and federal agencies, the TRRC has agreed to additional mitigation measures that will minimize any residual environmental impact to riverine resources along the route of the proposed Extension. The TRRC believes that these alterations in the alignment and the additional mitigation, coupled with the environmental and safety-related problems associated with the Four Mile Creek Alternative, clearly support your findings in the SDEIS.

With the foregoing in mind, however, the TRRC has a number of comments on specific sections of the SDEIS. Our comments focus on your analysis of 1) the "no action" or "no build" alternative; 2) safety of the Four Mile Creek Alternative; 3) environmental impacts of the Four Mile Creek Alternative; and 4) adjustments to the proposed alignment. The TRRC also would like to take this opportunity to respond to the few comments that have been submitted to date on the SDEIS.

The "no action" Alternative

Your review of the "no action" alternative (pp. 20-21) notes correctly that the TRRC "has already obtained ICC authority to construct and operate a 89-mile rail line between Miles City and Ashland". You also conclude that, should the Commission decide not to

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approve the proposed Extension, the TRRC could still construct the certificated 89-mile railroad. You further suggest that this railroad could serve "five potential coal mines in the Ashland area, including the permitted Montco Mine, with a coal production capacity of 38 million tons".

The TRRC believes that your conclusions regarding the effect of the Commission's denial of the proposed Extension do not accurately represent the current economic condition. First of all, the maximum capacity for Montco is 12 million tons annually, not 38 million tons. Second, the TRRC developed the application for the Extension based upon coal tonnage that could be generated from three existing mines at Spring Creek/Decker, as well as the future development of the Montco Mine and others in the Ashland area. During the initial years of operation, railroad traffic would rely on coal tonnage from these operating mines. The cashflows necessary to service the capital construction debt are based upon this initial haulage. Once the rail line has been constructed, the TRRC expects other opportunities from new Ashland area mines such as Montco to be developed.

As the TRRC noted in its application for the Extension, coal markets have shifted dramatically since the Commission approved the 89-mile line in 1986. As noted in the attached letter from Mike T. Gustafson, President of Westco Resources, Inc., referencing letters from Vince deSouza of Corporate Strategies, Inc. and Mark Maisto of Lehman Brothers, financing scenarios for the Extension are predicated on the TRRC capturing tonnage from the three operating mines at Spring Creek/Decker. Consequently, the Commission's denial of a certificate for the Extension will adversely impact the development of the certificated 89 mile rail line. The "no action" or "no build" alternative should represent that a denial of a certificate for the Extension would likely affect the construction of the certificated rail line.

Safety of the Four Mile Creek Alternative

The Section of Environmental Analysis (SEA) undertook additional review of the Four Mile Creek Alternative in response to questions raised by the TRRC over the safety of trains operating on that alignment. As noted in the SDEIS (pp. 4-7), loaded coal trains traveling from Decker to Miles City would encounter a steep 2.3 percent grade for roughly three miles of the descent along the Four Mile Creek drainage. This compares to an average .75 downhill grade for the proposed Extension. You correctly conclude that "the exposure to risk" of run-away trains on the Four Mile Creek Alternative is greater than that on the proposed alignment.

You also conclude, however, that if the TRRC were to employ seven locomotives on this three mile stretch of the alignment, as opposed to the three locomotives needed on the proposed rail line, and if the trains applied full braking power at speeds no greater than 10 miles per hour a railroad could operate safely on the Four Mile Creek Alternative. You

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support this conclusion with the note that some railroads "constructed many years ago" operate on comparable grades.

The TRRC believes that it would be imprudent for it or any railroad company to construct a rail line with grades as steep as those encountered on the Four Mile Creek Alternative, where a more suitable alternative is available. Seven locomotives, under full dynamic braking, could possibly hold descending coal trains. However, the margin of error is narrow and any loss of braking power could result in a derailment. Moreover, while acknowledging that there are older railroads operating on such steep grades, we question the wisdom of constructing a new rail line to outdated standards.

Environmental Impacts of the Four Mile Creek Alternative

The TRRC concurs with your analysis of the environmental impacts associated with the Four Mile Creek Alternative (pp. 8-13). We believe, however, that the chart in Appendix B "Comparison of Cuts and Fills" may not fully represent the difference between the Four Mile Creek Alternative and the proposed Extension. I have enclosed a sketch of the embankment at the mouth of Four Mile Creek that would be necessary were the alignment to be constructed at that location. The sketch graphically illustrates that the right-of-way would be elevated 70 feet above the existing terrain for a distance of 4,400 feet. Moreover, the alignment would be only 200 feet from an occupied ranch house.

Adjustment To The Alignment

You note in the SDEIS that the TRRC, working with a number of state agencies, has made a number of adjustments to the original proposed alignment (pp. 13-18). These adjustments have moved the rail line from 3/4 of a mile to between 1 and 1 1/2 miles from the Tongue River Reservoir. In addition to these adjustments, the TRRC has agreed to additional mitigation measures to ensure unrestricted access on a 24-hour basis to the Tongue River Dam and to review geotechnical data with the Montana Department of Natural Resources and Conservation. The TRRC believes that these and the other extensive mitigation measures that it has agreed to document the company's good faith efforts to work with state and federal agencies and the public to minimize any environmental impacts from this project.

Response To Comments On SDEIS

The TRRC has received only some of the comments that apparently have been filed with the SEA concerning the SDEIS. We note that few if any of these comments challenge specific technical findings in the SDEIS or offer new or helpful data. Most simply repeat criticisms of the project that have been voiced throughout these proceedings. We remind the Commission and the SEA, however, that there is a substantial body of support for the project

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from residents of Miles City, Montana and other locations and by utility and coal company representatives. State and national political representatives for Montana also have endorsed the project (See Comments of Powder River County Commissioners, May 3, 1994).

The TRRC does offer a few comments rebutting specific points raised by Montana Department of Fish, Wildlife and Parks (MtDFWP) Regional Supervisor Don Hyppa and by a number of property owners in Cornerstone Estates.

Comments to MtDFWP Regional Supervisor Don Hyppa

As Regional Supervisor Don Hyppa notes to you in his letter of May 2, 1994, the MtDFWP has met with TRRC representatives on numerous occasions to discuss potential project impacts that are specific to that agency. As is apparent from Mr. Hyppa's letter, a spirit of cooperation between all parties has existed throughout these meetings. The TRRC believes that many of the particular questions raised by MtDFWP and other state and local agencies about the project are best addressed in such meetings. By its nature, the EIS process cannot address every individual concern. On the contrary, the DEIS and SDEIS deal appropriately with the broader range of possible impacts from the project.

While not diminishing the cooperative framework of the above referenced discussions, the TRRC does take issue with some of the comments submitted by Mr. Hyppa. First, as noted above, we believe that the EIS process has proceeded appropriately in this case and that the SEA has developed information sufficient to address environmental concerns for the EIS. Contrary to Mr. Hyppa's analogy, this is not a coal permit project where specific agency requirements necessitate lengthy and involved studies of such issues as surface and ground hydrology and reclamation. The TRRC is proposing a linear project that, overall, will disturb very few acres. Moreover, because more than 90% of the project area is privately owned, the TRRC cannot gain access to the proposed right-of-way until it has negotiated with individual landowners. This is a common situation for linear projects (power transmission lines, pipelines, and highway corridors) and has not impeded the progress of similar EIS documents.

Moreover, as is customary with linear transportation projects, the TRRC has provided a level of engineering detail sufficient to develop construction, operation, and financing plans. We believe that this detail is also sufficient to evaluate overall environmental questions. Needless to say, the final phase of engineering will provide some additional site specific data. This is customary for any project and is adequately addressed in the 26 page mitigation plan for this project. The inability of the SEA to address every last question with regard to project construction can in no way impugn the integrity of the EIS.

The TRRC also notes that the Applicant and SEA have undertaken substantial environmental studies of the proposed and alternative alignments, including literature

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searches, field reconnaissances, scoping meetings, meetings with state and federal agency people, and three days of oral hearings. The TRRC does not share Mr. Hyppa's impression that the Commission and the Applicant are "relying on others to provide a detailed description and inventory of the existing environment, as well as an evaluation of impacts of the project". Rather, we only expect that commenting agencies will document their specific concerns after a review of the entire record in this proceeding.

With reference to Mr. Hyppa's concern for the environmental differences between the preferred alignment and the Four Mile Creek Alternative, the TRRC believes that, on balance, the preferred alignment is the environmentally correct alignment. As noted previously, safety concerns, larger land disturbance, and greater effects on residences along the Four Mile Creek Alternative, as well as the extensive mitigation plan developed for the preferred alternative, support the SEA's recommendation of the alignment.

Comments To UTU Counsel Daniel R. Elliott

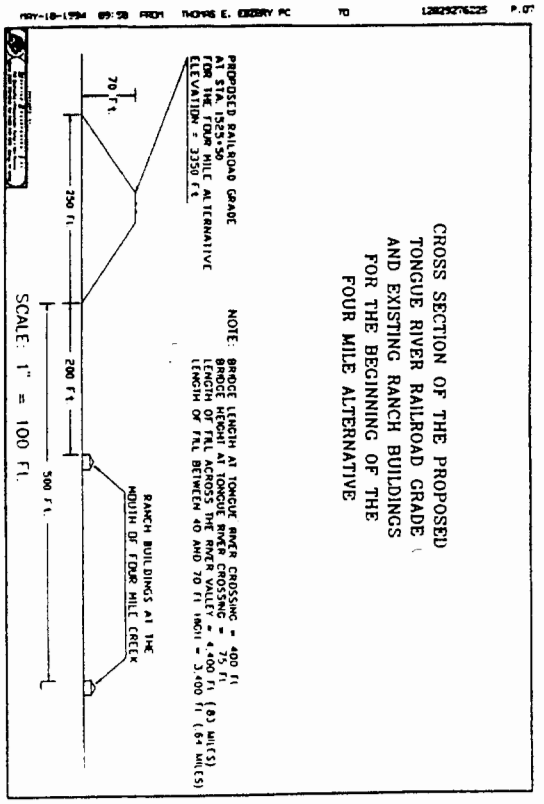
The TRRC also has received a copy of the very brief comments filed by the United Transportation Union's Assistant General Counsel, Daniel R. Elliott. Mr. Elliott repeats many of the same pleas for Commission's denial of the certificate that have characterize his organization since the start of these proceedings. He also restates the estimate of 166-172 railroad jobs lost if the project is approved.

The TRRC continues to believe that the SEA's estimate of approximately 57 Burlington Northern jobs that would be affected by the project is correct. Indeed, given the number of jobs lost due to the UTU's recent agreements in Montana in Wyoming to reduce crew sizes to 2 persons, we find it hard to understand how Mr. Elliott can continue to support the preposterous claim that 172 additional jobs would be lost if the TRR were constructed. To date, the voluntary UTU/BN agreements have probably resulted in more than that number. For this reason, we suggest that SEA disregard these unsupported claims by UTU's counsel.

Sincerely,

Thomas E. Ebzery
Attorney
Tongue River Railroad Company

TE/sc
enclosures



WESCO resources, inc.
406-252-5885 ☐ TRANSWESTERN III
550 NORTH 31st ☐ SUITE 250
P.O. BOX 1181 ☐ BILLINGS, MONTANA ☐ 59103

May 5, 1994

Mr. Tom Ebzery
Attorney at Law
1500 Poly Drive
Village Center I
Billings, MT 59102

Dear Mr. Ebzery:

I am in receipt of two recent letters from Vincent deSostoe of CSI and Mark Maisto of Lehman Brothers which I would like to have you submit along with my letter to the Section of Environmental Analysis (SEA) as official comments of the Tongue River Railroad on the supplement to the Draft Environmental Impact Statement issued March 17, 1994.

While we applaud the decision of the SEA to select the applicant's proposed action as the "environmentally preferable route", we have specific concerns about a number of statements contained in the document. I understand Historical Research Associates is preparing comments on the environmental areas of concern. My comments are limited to certain language contained in Chapter 6, the no action alternative.

Apparently the SEA is under the impression that if the application to add 40 miles to the approved 89 mile line is denied, the TRRC can still build the first leg and develop new mines. This statement ignores our 1991 application and the detailed financial information relative to construction of a 123 mile line as well as new coal marketing information, and a highly professional finance plan developed by Lehman Brothers in New York based on those market projections.

When asked in Miles City during the public hearing process if TRR's application to build the extension is denied, would I think TRR would build the 89 mile original line, I responded as follows:

> At this point I can't speculate. This is all a function of economics. And I think I just indicated to you that based on today's climate, based on the conversations that we're having with the financial institutions, based on the fact that we want to maximize the return on the capital deploy, and to

> develop as much efficiency and cost savings into this thing as we can, our intentions are to proceed with the development of the 123 miles.
>
> Tr. Miles City, pp. 377-378

Our position to treat the 123 mile project as a single entity as stated in our 1991 application and my 1992 testimony has not changed. The attached letters from our financial advisors, CSI and Lehman Brothers, emphasize that their work was focused upon the movement of coal from Decker and Spring Creek and Wyoming in the early years and Montco and other "near mines" in the later years. TRRC has expended considerable time and effort to developing these plans which are part of the 1991 application, and that effort continues today. To say that TRRC, if this application is not approved, would proceed to construct the first 89 miles on an old set of financial and market assumptions is a conclusion we may not reach.

Very truly yours,

Mike T. Gustafson
President
Wesco Resources, Inc.
Managing Agent for
Tongue River Railroad Company

Attachs.

csi
CORPORATE STRATEGIES, INC.

May 6, 1994

Mr. Mike T. Gustafson
President
Wesco Resources, Inc.
P.O. Box 1181
Billings, MT 59103

Dear Mr. Gustafson:

I have had an opportunity to review the supplemental Environmental Impact Statement recently released by the Interstate Commerce Commission's Section of Environmental Analyses ("SEA") and in particular, the language on pages 20-21 regarding the No Action Alternative warrants comment. I quote from the text:

> *Since TRCC has already obtained ICC authority to construct and operate an 89 mile rail line between Miles City and Ashland, TRRC could decide to construct and operate that portion of the line even if the Commission denies authority to TRRC to construct and operate the proposed extension from Ashland area.*

The statement goes on to note that the original application and authority would allow the TRCC to service the "Montco mine, a permitted mine site with an estimated coal production capacity of 38 million tons." This is inconsistent with TRCC's June 1991 Application and published reports showing a 10-12 million ton per year mine with tonnage beginning gradually, once rail construction is completed and the TRR is operational. It appears that the SEA did not fully review TRRC's June 28, 1991 application filed with the Commission. Pages 15 and 16 of that application clearly show that TRRC will be hauling 14 million tons from Decker and Spring Creek, 3 million tons from Wyoming and only 2 million tons from "near" mines (Montco) in year 1 of the project. Those tonnage numbers rise from 19 million to 31 million tons over a 10 year period. Even after 10 years of operation, over 2/3 of the tonnage comes from existing mines.

The numbers utilized to complete 49 CFR 1150.6 of the 1991 Application were based upon detailed operating and financial studies for the 123 mile alignment conducted by CSI, as well as coal marketing forecasts prepared by W.H. Wood Associates. The 1983 Application for the 89 mile line was based upon movement of coal from new proposed mines. CSI's engagement with the Tongue River Railroad involved preparation of Exhibit (E): Balance Sheet, and Exhibit F: Income Statement, contained in the 1991 Application. Information in these exhibits were based upon tonnage movements from existing mines at Decker/Spring Creek and Wyoming. The financial contribution of "near mines" such as Montco are very small in the early years. These two exhibits also reflect current construction costs and indexes for inflation.

csi
CORPORATE STRATEGIES, INC.

Mr. Mike T. Gustafson
May 6, 1994
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As I stated in Miles City at the public hearings, proceeding to construct the first 89 miles under approval of the 1991 Application would be management's decision, but CSI as a financial advisor to TRR would, without carefully analyzing a new set of scenarios, have serious doubts concerning the viability of constructing only an 89 mile line based upon 1981-1983 coal projections from just new mines.

You have made it clear to CSI, Lehman, and others since our engagement that this is a 123 mile project, not an 89 mile project. While we share your enthusiasm about low sulfur coal's positive future, I remind you that TRRC's Application is based on movement of existing and expanded production of Decker/Spring Creek coal, limited Wyoming coal movements, and gradually escalating new production from Montco and "near mines" in early years.

The SEA should be apprised of these facts which are contained in TRCC's Application and based upon this information make the appropriate corrections in the No Action Alternative when issuing the final EIS.

Sincerely yours,

Vincent deSostoe
for CSI

VdS:bdm.189

Coal tonnage hauled in year one will result in approximately 32 round trips per week on a 7-day weekly schedule. In year five 43 round trips per week have been projected; in year ten 52-55 trains per week can be expected to utilize the TRRC. These coals are and will be utilized in existing, expanded, or new generating plants.

Table 1. Coal Tonnage Forecasts [illegible] Tongue River Railroad.

Operating Year	ORIGIN			Total
	Decker Spring Creek	ERO Wyoming	"Near Mines"	
1	14	3	2	19
2	15	4	3	22
3	15	6	4	25
4	15	6	5	26
5	15	6	6	27
6	15	6	7	28
7	15	6	8	29
8	15	6	9	30
9	15	6	10	31
10	15	6	10	31

During the early years, the Tongue River Railroad will primarily haul coal from the Spring Creek and Decker mines. But with its completion, the development of reserves adjacent the right-of-way (Montco (permitted but not constructed) and possible mines in the Ashland, Montana area) will be expedited, with all of this production originating on the Tongue River Railroad.

Specific and more detailed marketing and traffic projections for the railroad are contained in subsection (c) below.

LEHMAN BROTHERS

MARK MAHTO
[illegible]

May 5, 1994

Mr. Mike Gustafson
President
Wesco Resources, Inc.
P.O. Box 1181
Billings, MT 59103

Dear Mr. Gustafson:

As financial advisor to the Tongue River Railroad and the firm likely to place the debt with lending institutions for the construction of the 123 mile rail line from Miles City to Decker, Montana, attention has been raised to a statement contained in the Supplement to Draft Environmental Impact Statement prepared by the Section of Environmental Analysis of the Interstate Commerce Commission and released for public comment.

I note that page 20 of this document discusses what would likely occur if the June 28, 1991 application to the Commission is not approved, and at least implicitly assumes TRRC will build the first 89 miles. This is an assumption which has not been part of our financial feasibility analysis. Lehman first developed financing scenarios for the 89-mile TRR based upon 1983 market forecasts. In the intervening 10 years, a number of the original market assumptions changed quite dramatically, including rail shipping rates, coal demand forecasts, etc. These changes required TRR to revisit its economics, and give extensive consideration to the economic influence of the proposed extension. At no time during our current engagement has there been any discussion or consideration of alternatives other than construction of a 123 mile line. The information contained in the 1991 application is the basis for our 1992 Verified Statement.

As you know, the fundamental economics of the current project relies on the ability to spread the investment cost over the largest possible coal tonnage. The tonnage directly attributable to the first 89 miles would make the economics significantly less attractive in the early years.

Mr. Mike Gustafson
May 5, 1994
Page 2

Therefore, it is my recommendation that you advise the SEA that errors exist in the draft statement, and the language addressed above is both inconsistent with the application and the information used as a basis for Roger McDaniel's Verified Statement in 1992. That statement was based upon of CSI operating and cost numbers, the capture of existing and expansion tonnage from Decker/Spring Creek, limited Wyoming tonnage, and eventual development of "new" mines in Montana. The information we relied upon is contained on page 16 of the application. It should be submitted to the SEA for their review.

Hopefully you will convey these concerns.

Sincerely,

Mark Mahto

[illegible]

TRADING POST
FORSYTH, MONTANA 59327
PHONE: 406/356-7729

May 4, 1994

Dana White, Section of Environmental Analysis
Interstate Commerce Commission
Room 3214
Washington, D. C. 20423

Finence Docket 30186 (Sub No. 2)

Most Honorable ICC Commission Member:

I am asking you to refuse to grant the extention to the Tongue River Railroad for the following reasons:

1. Both Democratic Candidates for the U. S. Senate have come out against the Tongue River Railroad as not being needed and in the best interest of Montana Citizens.
2. B. N. Railroad has set track runs at 200 miles with Glendive being one of the stops per the Billings Gazette dated 5-4-94 - thus Miles City will not be a stop.
3. There has not been a complete economic or social environmental study done on all six counties effected by the Tongue River Railroad.
4. The mines are already being serviced by the railroad.
5. Tongue River Railroad will destroy my business and the town of Forsyth.

The only action is "NO ACTION".

Sincerely,

Robert Kalt
Trading Post
Forsyth, Mt. 59327

Charles F. Gauvin
President
Chief Executive Officer

May 9, 1994

Dana White, Section of Environmental Analysis
Interstate Commerce Commission
Room 3214
Washington, DC 20423

Re: Finance Docket 30186 (sub. No. 2)/ Supplemental Draft Environmental Impact Statement ("SDEIS") for the Tongue River Railroad

Dear Ms. White:

On behalf of Trout Unlimited's 75,000 members, I am writing to comment on the above-referenced SDEIS.

For the reasons that will be set forth more fully in the written submissions of the Northern Plains Resource Council and other parties, Trout Unlimited believes that the SDEIS is inadequate and does not support approval of the Tongue River Railroad.

Our review of the SDEIS has uncovered little or no analysis of the project's impacts on fish and wildlife habitat, including the habitat of the river's wild rainbow trout population. The lack of analysis is startling given that the ICC's preferred route will involve crossing the river six times, with attendant disturbances of fish and wildlife habitat during and after construction and the perpetual risk of a hazardous materials spill due to a derailment or other accident. The latter risk is a serious one: in 1991, a Southern Pacific Railroad tanker car derailed while crossing a bridge over the upper Sacramento River in California. The derailment resulted in a discharge of metham sodium, which killed all forms of aquatic life, including a world-class wild trout fishery, in the upper river.

The SDEIS also fails to account for a host of other impacts that the project will bring to the Tongue River watershed. Those impacts include air pollution from the railroad and water pollution from the mining activity that the railroad will facilitate.

Trout Unlimited: America's Leading Coldwater Fisheries Conservation Organization
Washington, D.C. Headquarters: 1500 Wilson Boulevard, Arlington, VA 22209
PHONE: (703) 522-0200 FAX: (703) 284-9400

UNIVERSITY OF WYOMING
College of Agriculture
University of Wyoming
Sheridan Research and Extension Center
443 Wyarno Rd.
Sheridan, WY 82801
Phone: (307) 737-2413

May 6, 1994

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

Dear Ms. 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. 336. 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 maintence 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.

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 annually and use mechanical means for weed control, however, if they can be compared to BN practices this will occur rarely and is 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

UNIVERSITY OF WYOMING
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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 railroad started fires burn more than 1000 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 Willy Army 4 x 4 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 may say they will have "state-of-the art" equipment, but what use is the equipment if you can't get to the fire?

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 5 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.

The ranchers say they are concerned with trespass and I agree with them. With the Decker-Spring Creek spur going through the farm we have noticed a significant increase in the trespass 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 infestations 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 Hyoner
Superintendent

THE WILDERNESS SOCIETY

May 9, 1994

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

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

Dear Ms. White:

Please accept this letter as The Wilderness Society's comments on the Supplement to Draft Environment Impact Statement for the construction and operation of additional rail lines from Ashland to Decker, Montana by the Tongue River Railroad Company.

The Wilderness Society has reviewed the comments and finds that the Supplement to Draft Environmental Statement is inadequate for many of the same important reasons that made Draft EIS inadequate. Based on the information presented in the Supplement to Draft Environmental Impact Statement, this project should not be approved the Interstate Commerce Commission because of its failure to adequately consider a no build alternative in both EIS documents.

Additional reasons for not approving this project are that the Draft EIS and the Supplement fail to analyze the cumulative impact of the 131 miles of main line and extension of the railroad. It fails to adequately consider the impacts of the project on the Native American population residing in the area. The Supplement to Draft Environmental Impact Statement still does not comply with Section 7 of the Endangered Species Act, and therefore, this project should be rejected.

While the SEA did address some of the concerns raised in The Society's comments submitted October 21, 1992, there are several key issues which are not addressed and do not meet the NEPA standard:

No Build Alternative:

- The No Action Alternative is still inadequate for comparison purposes. Chapter One of the Draft EIS indicates that TRRC currently proposes to transport tonnages for the rail line already approved and the proposed

1400 SEVENTEENTH STREET, N.W. WASHINGTON, D.C. 20036
(202) 833-2300

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extension that are essentially the same as those previously indicated for the approved rail line alone. The Draft EIS further indicates that the largest percentage of tonnage would be transported on the proposed extension. Thus, if the ICC does not approve the rail line extension, impacts associated with the approved rail line would be less than discussed in the 1985 Final EIS for that line. The No Action alternative in the Supplement to Draft EIS should address any anticipated reduction of environmental impacts given this scenario.

- The entire Supplement to Draft EIS presupposes that the preferred alternative will be approved and does not give credence to the No Action Alternative. Given the potential for significantly adverse environment impacts occurring with all of the build alternatives, serious consideration should be given to the No Build alternative as the environmentally preferred alternative. Rationale must be provided to indicate why the No Action alternative is neither feasible nor preferred. A thorough discussion of impacts that would not occur under the No Build scenario must be included to provided an adequate comparison of alternatives.

- Further, since the anticipated TRRC revenues and purpose and need for the entire line is predominantly linked to the construction of the extension, it may not be reasonable assumption that TRRC would construct the Miles City to Ashland line regardless of whether the extension were built or not.

Cumulative Impacts:

- The current proposed action is for a 42-mile extension from the terminus of the approved rail line near Ashland to Decker. With the exception of addressing surface mining operations to be served by both the main and the extended TRRC rail lines, cumulative impacts from the construction and operation of the 131-mile rail line (main line and expansion) are not addressed in the Draft EIS or the Supplement to Draft EIS.

- Cumulative impacts are defined, pursuant to NEPA, as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonable foreseeable future actions. . . . Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." The Supplement to Draft EIS fails to address the cumulative effect of altering the character of the landscape and effects on cattle operations in the area, the cumulative loss of wetlands and in providing access for sport fishing and other recreational activities, as well as, the cumulative impacts to water quality, soil erosion, noise, aquatic and terrestrial ecology including endangered species, air quality, cultural resources, and issues identified as Native American concerns. Without an adequate discussion of the cumulative impacts associated with the construction and operation of entire 131-mile TRRC rail line, the Supplement to Draft EIS and the Draft EIS could be interpreted as segmenting TRRC's proposed action

into two projects. It is still TRRC's stated intent to provide a continuous rail line from Miles City to Decker.

Native American Concerns:

- The Supplement to Draft EIS must consider the impact of the proposed development upon the Northern Cheyenne and to a lesser extent the Crow Tribes. The Draft EIS 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. This is the case because traditional Northern Cheyenne have a spiritual relationship with the Tongue River, the Tongue 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.

  The Draft EIS 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. 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 uninterrupted solitude is necessary to engage in these ongoing religious activities and that impacts to Native American religious sites may also occur by limiting access. The Draft EIS 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.

- The Draft EIS 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. Thus, the project will have a negative secular impact in addition to the profoundly negative spiritual impact.

- 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., Pyramid Lake Paiute Tribe v. Navy, 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 ceremonials and traditional rites." 42 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 Supplement to Draft EIS or the Draft EIS currently support such a finding.

Endangered Species Act:

- Section 7(a)(2) of the Endangered Species Act states that each Federal agency shall insure that any action authorized, funded or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species. Therefore, in accordance with the Act, the ICC cannot authorize the proposed action until a Biological Assessment is prepared and a no-jeopardy Biological Opinion is issued. The statement in the Draft EIS that "TRRC will prepare the Biological Assessment during final engineering if the proposed extension is approved" does not comply with Section 7 of the Act: Interagency Cooperation, Federal Agency Actions and Consultation. The Supplement to Draft EIS fails to address issues raised by the ESA.

The Tongue River Railroad Company project should be rejected by the Interstate Commerce Commission. Please keep The Wilderness Society advised on this pending matter before the Commission.

Sincerely,

Michael A. Francis
Director
National Forests Program

"GATEWAY TO THE BIG HORNS"

P.O. BOX 848 — 86 E. GRINNELL — SHERIDAN, WY 82801
Ph. (307) 674-8483

May 3, 1994

Dana White
Section of Environmental Analysis
Room 3214
Interstate Commerce Commission
Washington, D.C. 20423-00001

REFERENCE: Finance Docket No. 30186 (Sub No. 2)
Tongue River Railroad Company - Construction and Operation on Additional Rail Line in Rosebud and Big Horn Counties, Montana

Dear Ms. White:

This letter is to inform you and all others who are involved, that the City of Sheridan's governing body, the City Council and the Mayor, have not changed from their original position of opposing the building of the Tongue River Rail Road Line from Ashland, Montana to Decker, Montana.

Sincerely,

Della Herbst

Della Herbst,
Mayor of Sheridan

DH:jf

BOARD OF COUNTY COMMISSIONERS
POWDER RIVER COUNTY
PO Box J
Broadus, Montana 59317

May 3, 1994

Dana White
Section of Environmental Analysis
Room 3214
Interstate Commerce Commission
Washington, DC 20423

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

Dear Ms. White:

We would like to comment on the above docket, Tongue River Railroad Company - Construction and operation of additional Rail Line in Rosebud and Big Horn Counties, Montana.

We support the proposed 41 mile extension of the rail line from Ashland to Decker, Montana. Opponents of the rail line predict loss of sales of coal from the Colstrip area mines. However, we would like to point out that this is non-compliance coal. If the Tongue River Railroad is built, several proposed mines of compliance coal could be opened in the Ashland, Otter Creek and Tongue River areas.

If the "no build" alternative is to be considered, there must be consideration given to recent developments with regard to the taxing of Burlington Northern Railroad by the Crow Indian Nation. This will likely result in high freight rates over the existing railroad.

The economic impact of the Tongue River Railroad would be very positive for Powder River County. First, economic advantage would occur with the construction of the railroad, creating jobs for area residents. But, more importantly would be the opening of low-sulfur coal mines in Powder River County. Permanent jobs would be available for area residents including Native Americans from adjoining counties.

BOARD OF COUNTY COMMISSIONERS
POWDER RIVER COUNTY

Ted Fischer

Victor L. Phillipps

Nancy H. Espy

cc: Mr. Thomas Ebzery, Village Center I, Suite 165, 1500 Poly Drive, Billings, MT 59102

Rosebud County
Forsyth, Montana 59327

Commissioners
Donald Bailey
Mark Pinkerton
Duane C. Martens

Clerk & Recorder
Geraldine Jost

Treasurer
Sharon Linton

Clerk of District Court
Marilyn Hollister

Assessor
Donna Kennedy

Attorney
John Forsyth

Superintendent of Schools
Sharyn Thomas

Justices of the Peace
Carol J. Potter - Forsyth
Ann Wagner - Colstrip

Sheriff
Kurt Seward

May 2, 1994

FD - 30186 - 2

Lynn Zanto, Planner
Montana Department of Transportation
Transportation Planning Division
P. O. Box 201001
Helena, Mt. 59620-1001

Dear Ms. Zanto:

The Rosebud County Commission has evaluated extensive data pertinent to the Tongue River Railroad extension.

While we recognize there could be some economic benefit in Birney and Ashland during the Construction phase of the line, the long list of probable negative impacts to Rosebud County and the entire State of Montana far out-weigh these benefits. We identify some of the critical negative impacts as follows:

1. The loss of a considerable number of jobs related to the railroad operation and maintenance from the Forsyth area.

2. The competitive edge given to Coal being mined outside of the state of Montana. This will impact flat-tax revenues to Rosebud County as well as severance-tax revenues to the State of Montana. It could have significant impacts on the export markets from the Peabody Big Sky Mine, the Sarpy Mine and the Western Energy Mine at Colstrip. This could also result in the loss of jobs from the mining industry.

3. The routing of the line will cause considerable dislocation and inconvenience to the farms and ranches in the Tongue River Valley. Property will be condemned to accommodate an economic scheme by speculators that has not developed as planned.

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4. Last, but not least, has been the number change in railroads and the project since the original 89 mile application was approved by the I.C.C. The line will most probably not lead to an increase in coal production in Rosebud County. New mines will not be opened when highly competitive mines are already operating a short distance away in Big Horn County and Wyoming.

In considering the above issues, the ICC members should be able to see through the veil of deception that has been spread over the issue by its principles to compel people to support it for selfish and unsubstantial reasons.

The ICC must revisit its charge of establishing public need and convenience. There is absolutely no need and the above mentioned negative impacts on Rosebud County certainly will not provide convenience for those living in Rosebud County who are negatively affected.

Therefore, the Rosebud County Commission continues to go on record opposing the Tongue River Railroad proposed line extension and request the Interstate Commerce Commission to deny the permit.

Respectfully submitted,

ROSEBUD COUNTY COMMISSIONERS

DONALD F. BAILEY, CHAIRMAN

DUANE C. MARTENS, VICE-CHAIRMAN

MARK PINKERTON, MEMBER

RCC/mv

State Historic Preservation Office
Montana Historical Society
1410 8th Avenue • PO Box 201202 • Helena, MT 59620-1202 • (406) 444-7715

April 5, 1994

Dana White
Section of Environmental Analysis
Room 3214
Interstate Commerce Commission
Washington, D.C. 20423

Re: Finance Docket No. 30186 (Sub No. 2): Supplement To Draft EIS, Tongue River Railroad Co., Proposed Additional Rail From Ashland to Decker, MT.

Dear Ms. White:

Thank you for requesting our comments. We have commented previously, so we would like to merely summarize those concerns at this time. Further, we anticipate further consultation under 36CFR800.4-.6 regarding most of our previous comments before the ICC permits any action.

The Draft EIS discusses only historic properties, identified at the Class I level, within a 3000 foot corridor. However, the existing Memorandum of Agreement for the larger undertaking stipulates use of a corridor one mile from centerline in the future identification and assessment of indirect effects. This issue is irretrievably tied to the identification and avoidance of Traditional Cultural Properties (TCP) and cultural landscapes referenced in the report prepared by Tallbull and Deaver (1991) for the ICC. TCPs must be identified before the ICC is irreversibly committed to a disturbance action where mitigation is not possible. Tribal input is critical during the initial survey strategy design. A MOA using a data recovery plan which allows property identification at a later project phase will likely not be capable of dealing with indirect effects resulting from related actions (e.g. increased timber use, waterway disturbance or mining) or ancillary activities (e.g. borrow sources and temporary roads) which may effect historic properties for which significance is not based in data recovery (e.g. TCPs, landscapes, and Native vegetation or mineral/paint use areas, etc.). We also believe that the 3000 foot corridor is inadequate in addressing effects to known sites such as 24RB229 or 24RB164. A No Action alternative may be necessary in order to avoid adverse effect findings on Traditional Cultural values.

We also note that the Eligibility of several of the previously recorded sites is either unclear or unresolved, and feel this is

related to a larger issue. A number of the sites were recorded and evaluated more than twelve years ago, now warranting re-evaluation based on current standards and regulatory interpretations. We can not address effects until eligibility is resolved.

We also recommend that the existing Tongue River Railroad MOA should be further amended to include provisions for NAGPRA and Montana Unmarked Burial Act compliance and documenting necessary artifact curation agreements. A straightforward provision for future amendments would also be useful.

It is entirely possible that the ACHP may want a new agreement. In any case, we believe that as part of the future agreement the Cheyenne and Crow tribes should be formally involved in the consultation process; and that they should be formally offered a concurring role in a current MOA before the ICC permits any irretrievable action.

Thank you again for requesting our comment.

Sincerely,

Stan Wilmoth

Stan Wilmoth, Ph.D.
Archaeologist

File: ICC/Tongue River R.R./1994

C.: Thomas Ebrary, Village Center I, Suite 165, 1500 Poly Drive, Billings, MT 59102

Montana Department of Fish, Wildlife & Parks

P.O. Box 1630
Miles City, MT 59301
May 2, 1994

Ms. Dana White (202) 927-6214
Section of Environmental Analysis, Room 3214
Interstate Commerce Commission
Washington, DC 20423

Dear Ms. White: RE: FINANCIAL DOCKET NO. 30186 (SUB NO.2)

As our previous correspondence and telephone conversations have indicated, the department has had difficulty evaluating the impacts of this project because of the lack of detail contained in the environmental report, EIS and Supplement.

Other projects which we've reviewed, such as proposed coal mines, customarily include field and engineering data as well as design details and analysis which we have been able to study. In this case, the permitting process is going forward on the basis of conceptual design, a line on a map and a few standard drawings. Engineering details have not been developed by the TRRC as a part of their application and consequently have not been fully evaluated by the ICC, the permitting agency.

We understand that the ICC may consider changing this process and we encourage that this be done.

Additionally, both the applicant and the ICC appear to be relying on others to provide a detailed description and inventory of the existing environment as well as an evaluation of the impacts of the project. Again, in other circumstances with which we are familiar, this has been the responsibility of the applicant or the permitting authority. This department lacks the staff and money to provide what we feel is the necessary level of detail. Consequently, we are relying on data previously acquired for other purposes.

In an attempt to adequately deal with the unknowns associated with this project representatives of three state agencies (DSL, DNRC and DFWP) met with representatives of the TRRC on April 18. A copy of my letter to Alan Newell, which summarizes that meeting, is enclosed.

We have agreed that in absence of detailed design, we will mutually develop a set of standards or goals to be met in the subsequent design of facilities, particularly river related structures. Those standards may not be in hand prior to the May 9 comment deadline. However, you have told me that ICC will make compliance with the

standards a subsequent license requirement.

We have no additional detailed information to offer the ICC for its use in considering this application. But, we reiterate our concern that the river, wetland and riparian habitat will be heavily impacted along ICC's now preferred river canyon route. Acre for acre it is far more productive wildlife habitat than the Four Mile route.

In specific response to the Supplement to the draft EIS we offer the following comments:

1) Page 9. States, "The SEA now believes that, subject to the receipt of further comments, the TRRC's proposed route, with appropriate mitigation and specific alignment changes (as discussed in Chapter 4), would have less adverse environmental impacts than the Four Mile Alternative." This inappropriately shifts to the state agencies the burden for making this route environmentally acceptable and further assumes that this will be accomplished.

While we are willing to work with the TRRC to minimize and mitigate the impacts as much as we can, we have not come to the conclusion that this effort will be enough to make the Tongue River route environmentally superior to the Four Mile route. Upon what basis does the SEC draw this conclusion in the absence of a thorough understanding of the final design, the impacts and as yet unidentified mitigation?

2) Page 9. States, "SEC will discuss below the newly-identified adverse impacts associated with the Four mile Creek Alternative." It would be appropriate and helpful if SEC, in each case, did a comparative analysis of similar impacts associated with the Preferred alternative. It appears this has been left to others to provide.

3) Page 10, item a. The department believes that cuts and fills along the river canyon route will also "significantly alter and scar the area and would change the natural land configuration for the duration of the existence of the right-of-way." While the four Mile route will be longer, acre for acre the river canyon is more important.

4) Page 10, item b. Has the SEC considered mitigation measures for soil loss in the Four Mile drainage. If they can be mitigated along the preferred route, why not here?

5) Page 10, item c. The SEC seems to be making the assumption that while the loss of ponderosa/juniper cover cannot be mitigated, ways will be found by others to mitigate the loss of agricultural, river bottom, riparian and wetland habitats.

6) Page 11, item a. The supplement addresses the impacts on five

B-55

residences and six access roads along the Four-Mile route. The final EIS should also consider the aesthetic intrusion on a remote and pristine river canyon of the preferred route which cannot be mitigated. It will be impossible to screen the roadway scar and attenuate the train noise. The railroad will be an intrusion for the farms along the route as well as the increasing number of recreationists who will use the Tongue River Canyon.

Thank you for the opportunity to comment and for your continued efforts to compare and evaluate the complex tradeoffs in the alternatives.

Sincerely,

Don Nyyppa
Regional Supervisor

cc: Dana White (10 copies)
Mr. Thomas Ebzery (Village Center I, Suite 165, 1300 Poly Drive Billings, MT 59102)
Glenn Marx
Mark Simonich
Bud Clinch
John Mundinger
Greg Hallsten
Alan Newell
Tom Ebzery
Dick Ellis
Thurston Dotson
Phil Stewart
Neil Martin
John Little

Montana Department of Fish, Wildlife & Parks

P.O. Box 1630
Miles City, MT 59301
May 2, 1994

Mr. Alan S. Newell, Environmental Coordinator
Historical Research Associates, Inc.
P.O. Box 7086
Missoula, MT 59807-7086

Dear Alan: RE: Tongue River Railroad Extension

This will summarize our meeting in Billings on April 18. Please feel free to call to my attention any error or oversight you might detect.

As you are by now no doubt painfully aware I became involved with this project very late in the process. Our discussions have helped me to better understand the timing and sequence of the design steps which are used for a project such as this one. It is most unusual for us to evaluate a project for which a substantial part of the data collection and design occur after licensing and not prior to the draft of the Environmental Impact Statement upon which the licensing decision depends.

To overcome the state's discomfort with a permitting process which is based upon conceptual rather than detailed design, the TRRC and the department agreed to develop standards to guide the planning and installation of facilities, particularly river crossings and other bank structures. These standards should become a part of the mitigation plan.

The typical drawings for bridges and piers, dated 4-18-94, were a very good start. The TRRC and the department agreed that these would be supplemented by a list of narrative standards or design goals for these facilities.

TRRC's consultants, Mission Engineering, will prepare the first draft and will forward it to John Mundinger for comment. Judging from our discussions, the resulting standards should be relatively straight forward.

We also discussed possible additional mitigation of train noise in the public recreation areas at Tongue River Reservoir. Moving the line farther from the shore, as already proposed by TRRC, will help a great deal. In addition, Mission Engineering will study the feasibility of berming in selected locations nearest the campgrounds and particularly between cut sections. The state understands that it may not be feasible to berm fill sections.

Other ideas discussed included monitoring by TRRC during rail operations to see if more noise attenuation is needed, if berming is the best option, or if other measures, such as possible tree and shrub planting might help.

We briefly discussed noise and visual impact in the Tongue River Canyon. The department has concluded that there is no way to mitigate the aesthetic intrusion on this presently pristine area.

Our meeting produced a strong affirmation of the mitigation team concept. I believe I came away with a better understanding of the team's role which is to provide a communication and planning network among the several resource management agencies and the TRRC. This should help to maximize mitigation effectiveness and, hopefully, to leverage additional mitigation by adding resources beyond those provided by the TRRC.

State representatives expressed a need for better definition of mitigation objectives and responsibilities. At the same time we indicated that these were difficult to define because we had not seen a good analysis of effects to wildlife and wildlife habitat, especially in the riperian and wetland areas.

In terms of negotiating the specific mitigation for which the TRRC will be responsible, Mr. Ebzery offered to consider a Memorandum of Understanding (MOU) between the Department of Fish, Wildlife and Parks and the TRRC. The department agreed to develop initial language for TRRC consideration.

The MOU is a newly introduced element for me, although possibly not for others. It cleared up some of my earlier confusion about the role and stature of the mitigation team, as well as the financial resources which will be available to it.

As I now understand it, through the MOU the Department of Fish, Wildlife and Parks will represent the interests of the State of Montana in developing a mitigation package with the TRRC. The department will also be responsible for coordinating this mitigation with the multi-agency mitigation team. John Mundinger and I will be working with Glenn Marx in the Governor's Office and with our sister agencies to be sure that this approach is acceptable.

I believe that Mr. Ebzery also said that, if necessary, the TRRC will consider other two party MOUs.

Greg Hallsten, Department of State Lands, expressed concern for the lack of specificity in the location of the center line through state school trust properties, thus holding up the analysis needed for their permitting process. Additionally, he reminded TRRC that access must be secured by TRRC through adjoining private property before DSL would consider a right of way across state sections.

Newell, May 2, 1994, Continued, page 3

TRRC replied that it was premature for it to provide this information which is based upon detailed field engineering and, therefore, requires private landowner permission for trespass. Typically, this is done after the line is permitted by ICC.

When TRRC renews its pursuit of a right of way across state lands DSL will issue one Preliminary Environmental Review for the entire route. DSL will issue a special use permit for access to tracts and for field engineering.

John Sanders, Department of Natural Resources and Conservation, indicated that TRRC and the ICC had provided information regarding their concerns about impacts on the floodway below the dam, adequate emergency road access to the dam and construction blasting in the vicinity. However, the new preferred alternative requires that DNRC give the railroad impacts more attention in the dam reconstruction EIS.

You asked me how we intended to handle the impacts of construction camps on recreation areas during dam reconstruction as there might be similar things considered for the railroad project. I replied that there likely was no similarity in that the recreation areas would be out of service and under construction at the same time the lake level was down and the dam was being rebuilt.

We also showed you approximately where the new recreation areas would be built and John Little promised to send to you a copy of the site plans.

In summary, the state is still concerned about the impacts of the new ICC preferred Tongue River Canyon route. And, while we understand the reason for it, we continue to be concerned about the present lack of detailed design and impact evaluation which we are accustomed to seeing in an application and Environmental Impact Statement. However, we are satisfied that we can work in good faith with ICC and the TRRC to develop standards and goals which will minimize, to the extent feasible, the impacts of the project.

We want to thank you, Tom and the consulting team for meeting with us and for your good faith efforts to address our concerns. It is clear to me that we must carry forward in that spirit as we address the relatively undefined construction and mitigation details of this project.

Sincerely,

Don Hyyppa
Regional Supervisor

Newell, May 2, 1994, continued, page 4

cc: Glenn Marx
Bob Martinka
John Mundinger
Bud Clinch
Greg Hallsten
Mark Simonich
John Sanders
Mark Simonich
Tom Ebzery
Dana White
Dick Ellis
Thurston Dotson
Phil Stewart
Neil Martin
John Little

Montana Department of Fish, Wildlife & Parks

MAY 5 1994

P.O. Box 1630
Miles City, MT 59301
January 21, 1994

Mr. Alan S. Newell, Environmental Coordinator
Historical Research Associates, Inc.
P.O. Box 7086
Missoula, MT 59807-7086

Dear Alan: RE: Tongue River Railroad Extension

Thank you for your December 27, 1993, letter. It was helpful in that it illuminated and clarified several items for me.

It might be equally helpful to you if I restated our position, as it appears that there may indeed have been mis-communication, at least on some points.

Our concerns, subsequent to Dick Ellis's original August 18, 1992, to the ICC, can be characterized as falling into two categories: 1) lack of sufficient information to enable us fully understand some of the potential impacts, and; 2) assuring that all impacts are adequately addressed in the final EIS.

Your last letter contained more information about river crossings, for example, than we've seen before, to my knowledge. If we've previously had this information and overlooked it, I apologize.

I recognize that we must be willing to trust in the good faith of TRRC and I want you to know that we're not looking for ways to obstruct the railroad or the process.

However, I think that the final EIS should contain the additional information provided since issuance of the draft as well as information about agreements reached through meetings and correspondence subsequent to the July 1992.

Additionally, in your October 12, 1993, letter you closed by saying "please let me know if there are outstanding questions." I felt that it was my responsibility to go over the record and call to your attention any items which seemed to need further discussion in the Final EIS.

Consequently, I included the discussion about noise and construction camps which I feel are relevant issues needing more discussion to make the evaluation complete and of public record. The EIS evaluation might conclude that the impacts are insignificant or will be adequately mitigated, but nonetheless they are matters which I felt needed more discussion.

Incidentally, mine noise is seldom heard at Casper Point. Noise from the operation of the railroad could still be a factor worth considering. I don't know how it could be feasibly mitigated, other than distance or berm, if it is a problem. It may just have to be acknowledged as a possible negative impact.

I do support the concept of a multi-agency task force. I also think that to be credible and effective there needs to be written assurances on the public record that it will be more than an advisory group which could be ignored and that there will be financial support from TRRC to fund appropriate mitigation.

I am willing to meet in Helena. Let's try for a date sometime in February. At some point it would be helpful to also meet at the hatchery, but that can come later.

Sincerely,

Don Hyyppa
Regional Supervisor

cc: Bob Martinka
John Mundinger
Dick Ellis
Thurston Dotson
Phil Stewart
Neil Martin
John Little
Greg Hallsten, DSL

Montana Department of Fish, Wildlife & Parks

Rt 1, Box 2004
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 Decker.

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 "6" 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 million 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 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 re-location 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 assure 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.

Executive Summary - bottom of VII and top of IX - Four Mile Creek to 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:

> Elser, 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 30th 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 4.9.1.6 - Page 4-80 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 TRRC to the BN line. Although the DFWP has repeatedly requested that sufficient information be provided to allow evaluation of 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.

4.10.2.2 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 indepth 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 TRRC" 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 TRRC 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 TRRC. (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 TRRC 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
Regional Supervisor

Montana Department of Fish, Wildlife & Parks

Route 1, Box 2004
Miles City, MT 59301
December 10, 1993

Mr. Alan S. Newell, Environmental Coordinator
Historical Research Associates, Inc.
P.O. Box 7086
Missoula, MT 59807-7086

Dear Alan: RE: Tongue River Railroad Extension

Thank you for your patience in waiting for my response to your October 12, 1993 letter to me.

I begin by restating the department's strong preference for the Four Mile Creek Alternative which causes far less adverse impact to the fish, wildlife and recreational resources in the vicinity of Tongue River Reservoir and down stream than does TRRC's preferred route in the Tongue River Canyon.

We also believe that the TRRC could be more forthcoming with design and mitigation details. We see signs of progress in that direction, which is encouraging, but more is needed.

The balance of my comments are more specific as follows:

Issue 1: Recreational Resources

We are relieved to know that some of the TRRC Preferred Alternative line has been relocated farther to the west in the vicinity of the reservoir. This will definitely diminish the recreational impacts. However, the railroad will still be at the reservoir's edge at Monument and Creek Leaf Rock Creeks.

We continue to believe that noise levels will still be high at developed recreation areas, especially in the evening and during the night when noise carries farther due to atmospheric conditions and when people value a peaceful, restful environment. Noise is a significant issue for recreationists trying to enjoy a "natural setting" such as Tongue River Reservoir provides. We enforce a "quiet hours" rule after 10 PM.

Noise from the railroad's operation, which will continue throughout the life of the line and which will become more frequent as line traffic increases, is of far more concern to us than construction noise.

Fee revenue for 1993 will total over $41,200 which is about $10,000 more than for 1991. Park use continues to increase. As you know, we intend to make an estimated $1 million investment in capital improvements in conjunction with the rebuilding of the Tongue River Dam. This will stimulate even more use. The impact of the TRR on recreationists at the reservoir is not an incidental matter.

Still unaddressed in the draft EIS are sociological impacts in the recreation areas during construction, such as competition between recreationists and construction workers who choose to stay there rather than at construction camps. Construction workers will have the opportunity to monopolize prime camping spots. The only way the department could respond would be to restrict everyone's length of stay, which would also penalize true recreationists. Differing recreation and work hours as well as on site activities could also cause conflict.

It would certainly be appropriate for construction workers to use the sites for true recreation. But, experience elsewhere indicates that at least some will try to use the recreation areas as semi-permanent quarters. If not controlled, and control will be a significant additional management burden, migrant construction camps tend to create a collection of vehicles, personal belongings, pets, sheds, fences, clothes lines and other incompatible items.

Also unmentioned is the impact to the "down stream" recreation site immediately below the dam. The impacts will be similar those experienced on the reservoir sites. Additionally, we assume access to this site from downstream will require one or more railroad crossings.

Issue 2: Fisheries

We appreciate your written assurances that there will be no channelization or alignment changes of the Tongue River. These statements need to be a part of the Final EIS.

However, I cannot agree that these assurances alone adequately address the concerns raised by Mr. Ellis. Absent engineering information there is still reason for the department to be concerned about disturbances of water quality during construction and changes in flow of water around structures after construction of multiple crossings in a 4 mile stretch of river.

Issue 3: Facilities Acquisition

We appreciate your offer to continue discussions and begin studies of the potential impacts to the fish hatchery. I agree that a meeting in Miles City with your planners and engineers to discuss mitigation baseline testing (and possibly other testing) as well as alignment and mitigation options should be useful. The department needs more information for it to adequately understand the impacts

of the railroad on the hatchery facility and its operation.

Issue 4: Mitigation of Impacts

The department supports the concept of a multi-agency task force to assist with developing mitigation measures. However, that concept must be backed by specific written assurances that the task force will have the stature to meaningfully influence action and will have at its disposal the resources necessary to carry out adequate and effective projects.

The mitigation plan must contain strong assurances that the task force will have the stature and tools to be effective. The alternative is for TRRC to initially be more specific about mitigation as Mr. Ellis has stated.

Thank you again, Alan, for your patience and for this opportunity to comment on your letter.

Sincerely,

Don Myrppa
Regional Supervisor

cc: Al Elser
John Mundinger
Dick Ellis
Thurston Dotson
Phil Stewart
Neil Martin
John Little
Greg Hallsen, DSL

B-59

HISTORICAL RESEARCH ASSOCIATES, INC.

Missoula

cc: John Mundinger
Route a Copy to Phil & John & mail -
Return original to me
Thanks Dilo

December 27, 1993

Mr. Don Hyppa
Regional Supervisor
Montana Department of Fish, Wildlife and Parks
Route 1, Box 2004
Miles City, MT 59301

Re: Comments submitted on the DEIS for the Tongue River Railroad Extension

Dear Mr. Hyppa:

Thank you for your letter of December 10 concerning Department of Fish, Wildlife and Parks (DFWP) comments on the Draft Environmental Impact Statement for the Tongue River Railroad Company's (TRRC) proposed extension. I appreciate the DFWP views, but I fear that there has been a mis-communication concerning the adjustment of the alignment and the responses that the TRRC has made to the department's initial concerns. In an effort to clarify our relative positions, I agree that a meeting, perhaps at the DFWP headquarters in Helena, is warranted. I am prepared to have the TRRC's consultant's meet with DFWP staff to go over any remaining the concerns that the department may have about this project. In anticipation of such a meeting, I would like to address a few of your concerns and hopefully clarify matters.

You have expressed a concern that the TRRC's proposed route could cause problems for what you believe to be an expanding recreational use of the Tongue River Reservoir Recreation Area, principally in the areas of disturbance from noise and possible overuse of camping areas by railroad construction workers. In response, the TRRC is aware of the increased use of this area by recreationalists. We also are aware that there are plans to improve the facilities at the recreation area when funds become available through the Tongue River Dam Rehabilitation Project. Frankly, this was one reason why the TRRC relocated its proposed route further west of the recreation area. We believe that this relocation substantially reduces the likelihood of a negative impact. I am enclosing a map showing the adjusted alignment further to the west of the reservoir.

Second, your letter suggests that a railroad running intermittently along an alignment that is generally one mile from the recreation area would have a particularly negative impact to the site. Please consider when examining the possible noise impact from the railroad, the fact that

Mr. Don Hyppa
December 27, 1993
Page 2

there are three active coal mines adjacent to the recreation area. These mines are blasting on a daily basis. Apparently the presence of these mines has not created an unusually negative impact from noise or a decline in visitor use -- rather, quite the opposite.

If noise remains a concern, or could be demonstrated to have an negative impact, the TRRC is open to further suggestions from you as to mitigation.

I also would ask you to reconsider the impact from construction workers camping at the recreation site. The TRRC has committed to developing construction camps to avoid just such a situation. However, if it were to occur and to cause a problem, perhaps we could jointly develop some type of contingency plan. I suspect that if this eventuality is a problem for the TRRC, then you have also considered it for the planned rehabilitation of the Tongue River Dam. What are the plans for addressing this issue in that context?

Your letter continues to raise concerns about possible changes to the Tongue River as a result of bridge and rip-rap construction. We have addressed this issue with your department on numerous occasions. The TRRC engineers and hydrologists who have studied these crossings extensively do not believe that these will be any negative impact to the river from the construction of bridges or associated rip-rap. During normal water flows there should be no measurable change in the characteristics of water flows or direction in the areas of the proposed bridges for the Tongue River Railroad. The bridges are being designed with the main abutments 10 to 20 feet back from the edge of the existing channel. If additional piers are required for the longer span bridges, they will be designed in a tapered manner to provide uniform flow in the river section while passing under the bridges. The bridge designs will incorporate hydraulic studies at each crossing to insure that the integrity of the river's velocities, depths, and direction will be maintained.

Due to the fact that the existing river banks are very soft and erodible, rip-rap will be placed up and downstream from the bridges to prevent undermining of the abutments. The placement of this rip-rap will be designed to insure the integrity of the present river width, velocities, depths and direction.

The TRRC has spent a great deal of time and money to insure the integrity of its design of these crossings. The alignment conforms to all applicable FRA and engineering standards. If you need additional data to review, perhaps you can let me know precisely what you need and I can pass it along to the engineers.

I note that you think that a meeting in Miles City is warranted to discuss the Fish Hatchery issue. I agree with this and hopefully we can schedule it soon after the start of the new year. I suggest, however, that, if possible, the meeting be held in Helena. By scheduling the meeting at the state office, I can insure that I can make available the TRRC consultants that your staff might want to talk with.

Mr. Don Hyppa
December 27, 1993
Page 3

You also raise concerns about the establishment of a multi-agency task force to address present and future environmental issues involving the railroad. This idea came about as a result of a meeting that the TRRC and the ICC had with your department earlier this year. Everyone at that meeting, including the TRRC representatives, thought that it was a novel and good idea. The TRRC has strongly supported this idea since that date. If you have specific ideas as to how the task force could be structured to be most effective, we would like to hear them. Since there is likely no statutory authority for this entity, it must be included as part of the TRRC's mitigation plan, which would be part of the ICC's certificate.

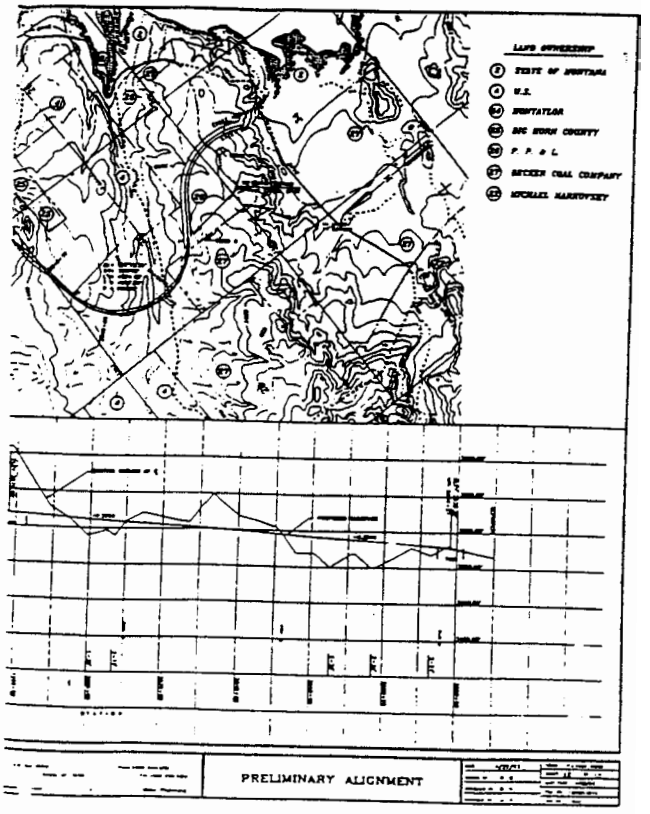
Finally, I note that the DFWP continues to favor the Four Mile Creek Alternative Route. As you know, the ICC has recently decided to recommend the TRRC's proposed route as the environmentally preferable alignment and is preparing a supplemental DEIS on that issue. You will have an opportunity to review that document and to address specific comments on the route to the ICC in the near future.

Again, I thank you for your letter. Let me assure you that the TRRC is prepared to meet with you at your convenience to discuss your concerns and to respond to specific questions.

Sincerely,

Alan S. Newell

ASN/cm/027-255



DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

MARC RACICOT, GOVERNOR

STATE OF MONTANA

LEE METCALF BUILDING
1520 EAST SIXTH AVENUE

PO BOX 202301
HELENA, MONTANA 59620-2301

May 5, 1994

Ms. Dana White
Section of Environmental Analysis, Room 3214
Interstate Commerce Commission
Washington, DC 20423

Re: Finance Docket 30186 (Sub No. 2)

Dear Ms. White:

The Montana Department of Natural Resources and Conservation is commenting on the Supplement to Draft Environmental Impact Statement for the Tongue River Railroad Extension because we are responsible for the operation, maintenance, and rehabilitation of the Tongue River Dam near the Decker, Montana end of the proposed railroad. As we have made you aware in previous correspondence and meetings, this department anticipates construction of a new spillway during calendar years 1996 and 1997 which will result in a four-foot raise in the reservoir elevation.

Concurrent with this construction at the dam, this department, in cooperation with other state and federal agencies, will be initiating a program to mitigate and enhance fish and wildlife habitat in the Tongue River basin. Regardless of when construction of the proposed railroad occurs, we anticipate the Tongue River Railroad Company will have fish and wildlife habitat mitigation and enhancement responsibilities as well.

We are aware of the railroad's proposal to conduct multi-agency, multi-discipline planning for environmental mitigation of the impacts of the railroad. However, we feel the development of this concept in the environmental impact documents is inadequate to ensure this department that our efforts and expenditures will neither be compromised nor negated by the construction of the railroad. We can not tell from the level of detail of information presented what mitigation projects will or may be pursued. More attention and development of concepts and commitments needs to be addressed in both the railroad's mitigation plan and the Final EIS.

We are most anxious to see additional information regarding the mitigation planning for the railroad. We are willing to continue working with you, the railroad, and other agencies to ensure that conflicting or overlapping impacts of our two projects are minimized.

Thank you for the opportunity to comment once again on the environmental planning for this project. If you have any questions, please call me at (406) 444-6699 or contact John Sanders at (406) 444-6693.

Sincerely,

Mark A. Simonich
Director

MAS:JS ms

encl: ten copies
c: Mr. Thomas Ebzery

Montana Department of Transportation

May 9, 1994

Dana White
Section of Environmental Analysis
Room 3214
Interstate Commerce Commission
Washington, D.C. 20423

Subject: Supplement to Draft EIS for Finance Docket No. 30186 (Sub. No. 2): Proposed Tongue River Railroad Line from Ashland to Decker, Montana

After reviewing the subject document, the Montana Department of Transportation offers the following comments:

1. A minimum number of highway railway crossings and road relocations should be achieved in order to improve safety circumstances. Based on this criteria the Department prefers TRRC's original alignment. However, since all crossings and relocations will impact roads under the counties' jurisdiction, the Department will continue to act in an advisory capacity to the counties and support the alternative preferred by them. The counties have had the opportunity to review this supplement. Bighorn County is impartial and Rosebud County strongly promotes the no build alternative as explained in the attached letter.

2. The Department would like to emphasize that if development occurs, all railroad crossings, new roadway construction and roadway relocations should conform to Department of Transportation standards.

Thank you for the opportunity to comment.

John D. Craig, Chief
Multimodal Planning Bureau

JDC:D:TP:97.cg

cc: Rosebud County Commissioners
Bighorn County Commissioners
Gary Larson - MDT Secondary Roads Engineer
Roy R. Ventura, Jr., P.E. - Billings District Engineer
Gary Gilmore - Acting Glendive District Engineer
Les Peterson - Glendive Construction Engineer
Thomas Ebzery, TRRC Representative

BEFORE THE
INTERSTATE COMMERCE COMMISSION

In the matter of:
TONGUE RIVER RAILROAD COMPANY
Construction and operation of additional rail line from Ashland to Decker, Montana.

FINANCE DOCKET NO. 30186 (SUB NO. 2)

May 5, 1994

COMMENTS SUBMITTED BY:

Montana State Legislative Board
Brotherhood of Locomotive Engineers

WITH RESPECT TO:

Supplemental Draft Environmental Impact Statement
Service Date March 24, 1994

The Montana State Legislative Board, Brotherhood of Locomotive Engineers, respectfully submits the following comments concerning the above captioned matter:

We support the no action alternative, and implore the I.C.C. to fully consider it, as it is the best solution.

1. With respect to the "no build" alternative, the Commission's Section of Environmental Analysis (SEA) admits that this alternative would "be environmentally neutral since construction and operation of the proposed Extension and related environmental impacts would not occur."

Our contention in this respect is that SEA has failed to (1) fully consider the impacts that line construction and operation will have on the natural habitat within the Tongue River drainage and ecosystem, and (2) SEA has failed to fully consider the present Burlington Northern Railroad route from the Wyoming coal fields through Montana and the Midwest with respect to this rail line's adequacy for handling of both present and future coal traffic.

Indeed, the importance of such considerations are not without precedent, only recently the U.S. Court of Appeals for the 8th Circuit in St. Louis stayed construction of a new

9.67-mile spur line between Bevier and Dinkley, Missouri, wherein the plaintiffs had alleged that the I.C.C. had violated the National Environmental Policy Act with respect to preservation of a natural habitat; and, that the I.C.C. had failed to take into consideration the presence an existing rail route, a Norfolk & Western Railway line serving the area in question. The court agreed with the plaintiffs on these two issues, and stayed construction of the duplicate line. (See attachment number 1.)

2. The SEA comments that under the "no build" option, the Tongue River Railroad Company (TRRC) would still have the authority to construct and operate a rail line between Miles City, Montana and Ashland, Montana, and TRRC "would be able to serve new mines in the project area even if the Commission denied the proposed extension."

Indeed, the central question here is: Why in the intervening period between 1985 (when I.C.C. construction authority was granted) and the present, has original the 89-mile segment of the railroad not yet been built?

Are not the same financial rewards and incentives in place now as they were then? If they are there, then it should have been built. If they are not, and the developers still want to push ahead, then it becomes even clearer that the real motive here is to provide an alternative route for Wyoming coal, thus creating duplicate service, which will lead to excess rail

capacity between the Wyoming coal fields and the Midwest utilities.

Further, if the coal presently underground in the Ashland, Montana area is of superior marketable quality (as the applicants allege), then why hasn't the Montco mine (which is permitted for construction) been built? This being a mine which could be serviced by the presently permitted but as yet un-built 89-mile TRRC rail segment, without the need for the proposed extension. Moreover, we have been made aware that coal leases in this area are expiring. Has the I.C.C. researched this to better determine the need question?

3. The SEA comments further that "with the 'no build' alternative, the present movement of coal from the Decker mines would be unaffected because Burlington Northern Railroad is already providing service to these mines via an alternative route."

This is the essence of the entire matter: The area is being served by a well run and efficient common carrier, that is Burlington Northern Railroad.

The Commission is required to give complete consideration with respect to the need for new service in relation to public convenience and necessity, particularly in a situation where excess capacity can be created, and for an area

which is presently being adequately served.

Moreover, in the court case described above, failure to consider "existing" lines was, in part, sufficient reason to stay construction of an additional line which would duplicate service.

The court case not withstanding, there are current economic comparisons that SEA must investigate, namely those which have the effect of impacting financial operating cost comparisons for the line-haul between TRRC and Burlington Northern which SEA and the Commission must be consider, among them are:

The implementation of the Northern Lines crew consist agreement, which permits each coal train (as well as other trains) to be operated with just two employees, whereas they were operated by four employees prior to the agreement. This has the obvious effect of lowering Burlington Northern's labor costs on the present coal route line.

Additionally, Burlington Northern has embarked on a track upgrade program which will see the installation of "automatic switches" on all railroad sidings on the present coal haul route between Forsyth, Montana, and Dilworth, Minnesota. This will create either fully automated or semi-automated train control on the entire BN line between the coal fields in Wyoming and Dilworth, Minnesota.

This will have the effect of reducing turn-around time on coal train car sets, and improve utilization of both Burlington Northern and utility owned coal cars. Collaterally, the use of the new switches, taken together with present improvements now in place, can combine to create the opportunity for even greater capacity on the present Burlington Northern line from Wyoming, through Montana to the Midwest utilities.

Furthermore, Burlington Northern is presently moving ahead with plans to create a train crew run-through between Glendive, Montana and Mandan, North Dakota, which will eliminate Dickinson, North Dakota as a crew change point. (No train crew jobs will be lost, as employees will be transferred elsewhere in the seniority district.)

Additionally, Burlington Northern also plans to create a "helper district" to expedite the movement of coal trains on their eastbound trip over the hills climbing up to the Missouri River plateau near Dickinson, North Dakota.

These last two changes will similarly have the effect of decreasing cycle time for coal train car sets, and increase through-put capacity of the present Burlington Northern line.

Burlington Northern recently announced plans for the largest single purchase of railroad locomotives in its history.

These new locomotives will enable BN to operate trains using fewer locomotives per train, and do so more efficiently, again reducing their costs.

Additionally, these and other continuing improvements Burlington Northern is making in terms of consolidating crew calling, centralizing clerical staff, etc. mean that taken together, they will enable BN (through labor cost savings) to be very aggressive in contracting for the haulage of coal. We see this as mitigating, if not eliminating, the described savings that the proposed new line could offer by virtue of the somewhat shorter line-haul difference versus Burlington Northern.

The foregoing illustrates that the carrier presently serving this area (Burlington Northern) is not only doing so adequately, but is actively working to reduce costs, and decrease transit time for coal trains between Wyoming and the Midwest. To permit a new carrier to commence operations under these circumstances would surely be contrary to any test for public convenience and necessity.

The SEA must undertake to actively investigate the more recent changes in Burlington Northern's corporate management strategies for cost reductions and labor cost savings to learn how these in combination pose what could be a serious threat to the financial viability of the proposed TRRC line extension.

4. Taken on balance, the extension can not be justified. It is only a thinly disguised means to create an alternate route for the movement of Wyoming coal into the upper Midwest, thus creating duplicate and excessive capacity for the movement of coal from those Wyoming coal fields to the Midwest utilities.

WHEREFORE, in consideration of the immensity of the negative impacts on thousands of people's lives, jobs and the environment, and the creation of excess rail capacity, we ask that the Commission deny the request for the authority for construction of the extension.

Respectfully submitted,

MONTANA STATE LEGISLATIVE BOARD
BROTHERHOOD OF LOCOMOTIVE ENGINEERS

BY: David B. Ditzel
David B. Ditzel, Chairman

DATE: 5-9-94

NOTICE OF MAILING

I have on the date shown below, deposited in the U.S. Mail with first class postage affixed, a true and correct copy of these comments to:

Mr. Thomas Ebsary
Village Center I, Suite 165
1500 Poly Drive
Billings, MT 59102

BY: David B. Ditzel DATE: 5/9/94

Montana State Legislative Board
Brotherhood of Locomotive Engineers

****

ATTACHMENT NUMBER ONE

"BN plan to build Missouri spur put on hold by 8th Circuit Ruling"

Journal of Commerce
December 17, 1993

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BN Plan to Build Missouri Spur Put On Hold by 8th Circuit Ruling

By GREGORY S. JOHNSON

A federal appeals court has temporarily shelved an attempt by Burlington Northern Railroad to build a spur to a Missouri power plant. The court sided with a mining company and the Missouri & Iowa Railway, both of which want to use an existing route and preserve a natural habitat.

The U.S. Court of Appeals for the 8th Circuit in St. Louis has partially stayed a construction exemption requested by BN from the Interstate Commerce Commission in January and granted in March.

The exemption covers construction of a new 8.27-mile spur between Bevier and Macksburg, Mo., near abandoned Bevier and Southern Railroad right-of-way that BN is buying from Associated Electric Cooperative, Inc. The spur would link up with BN's mainline at Bevier.

BN has halted work on the spur, but is going ahead with construction on the southern leg, which was unaffected by the court ruling, said Richard A. Ainsworth, BN's director of communications.

The big western carrier wants to haul coal from Wyoming's Powder River Basin to the Thomas Hill Energy Center over a 17-mile line between Bevier, Mo., and Thomas Hill, near Moberly, Mo.

The power plant, owned by AECI, burned high-sulfur coal from local AECI mines, but in 1991 switched to out-of-state, low sulfur coal.

But the construction is opposed by Missouri Mining Inc. and RJE Corp., M&I's parent, which asked the appeals court to review the case. They contend that the ICC violated the National Environmental Policy Act in granting the exemption to BN.

They argued the commission failed to consider as an alternative route, an existing Norfolk & Western Railway line between Moberly, Mo., and Hamilton, Iowa, and a spur from Excello, Mo., which connects the N&W line to Thomas Hill.

M&I's parent, Norfolk Southern Corp., applied and received ICC permission to abandon the Moberly-Hamilton route over the objections of Missouri Mining and state officials who accused the carrier of reneging traffic swap.

Although BN claims the alternative N&W route is inadequate, both the N&W line and spur have been used recently to haul coal and other commodities to Thomas Hill and will be used again in the near future, said William P. Jackson Jr., an attorney with the Alexandria, Va., law firm of Jackson & Jessup.

Mr. Jackson represents Missouri Mining, RJE, the town of Kirksville, Mo., and a local landowner who alleges his property would be harmed by BN's construction.

Missouri Mining and RJE also complained to the 8th Circuit that BN never mentioned that the alternative route existed in its environmental assessment. The assessment was required because 123 acres of wildlife habitat would be affected by BN's construction.

Using the existing N&W line would avoid any environmental damage and the need for 16 creek be crossed at grade by a new B Hill, the opponents said. They sa that BN also neglected to mentio that it would use the alternativ N&W route until its own line w built.

Missouri Mining operates low coal mines and has invested $3 mi lion to develop a 65-acre landfill Johnsburg, Mo. The company hop to receive 20 carloads of solid, no hazardous waste when rail servi is available, said Orlando C. Schla ter, Missouri Mining's president.

Both sides will be back in cou for a briefing at the end of Januar

JOURNAL OF COMMERCE 12/17/93

ATTACHMENT NO. 1

T. R. SHELBY
23 TOWN PLACE
SHERIDAN, WY 82801

STATE LEG. DI
UTU LOCAL 951
(307) 674-4521

united transportation union

May 9, 1994

Ms. Dana G. White
Section of Environmental Analysis
Room 3214, Interstate Commerce Commission
Washington, D. C. 20423

RE: Finance Docket No. 30186 (Sub. No. 2)
(Supplement to DEIS - TRRC construction and operation)

Dear Ms. White,

As the United Transportation Union's Wyoming State Legislative Director, and on behalf of Local 951 (Sheridan, WY), I respectfully submit the following facts and commentary expressing our opposition to granting a permit for the construction of Tongue River Railroad Company's (TRRC) 41 mile extension (Ashland to Decker, MT).

During my past twenty years as a Locomotive Engineer operating out of Sheridan, WY, I have been directly involved with the transportation of all coal shipped from the Decker and Spring Creek mines. Having this "ground floor view", leaves me no choice but to support the "NO ACTION ALTERNATIVE" addressed in Chaptar 6 of the SOEIS. After two decades of track upgrades on the Sheridan-Huntley-Forsyth route and numerous specific Labor-Management agreements, we believe that the current route provides cost efficient and expedient service to this area. To construct a parallel line would merely upset the fragile ecological balance of this region and stress the economies of the communities involved. It is inconceivable that the TRRC could duplicate such efficient operations without severely compromising this area's environmental and financial attributes.

Since our area of expertise concerns the actual rail operations of the affected area, I would like to partially reproduce the earlier testimony (at public hearings with Administrative Law Judge Cross) of Mr. R. S. Knutsen, UTU Local Chairman 8951, regarding rail job losses should the Tongue River Railroad (including the 41 mile extension) be constructed.

In his capacity as Local Chairman, Mr. Knutson is directly involved in the Sheridan terminal's manpower allocation with regard to trainmen. This responsibility includes the authority to adjust the manpower within the individual pools and extra board respective to the flow of traffic. This testimony should provide you with a brief history of the areas coal operations and credible evidence of the severity of rail job losses should the TRRC become a reality.

"Previous to 1969, crews operating between Forsyth, MT and Laurel, MT were employees of the Northern Pacific Railroad. Crews operating between Sheridan, WY and Laurel, MT were employees of the Chicago, Burlington and Quincy railroad. Although these two different railroads operated on separate line segments they did intersect at Huntley, MT and shared common trackage for the remaining 26 miles to Laurel. In 1969, the CB&Q and NP along the Great Northern Railroad merged to create what is now the bulk of the Burlington Northern Railroad. This merger left intact the terminals, designated trackage and the separate employee seniority districts of Forsyth and Sheridan.

During the later 70's, Sheridan area coal mines where able to secure contracts that would require the movement of loaded unit coal trains from Sheridan to Forsyth and to then continue eastward. Originally, a loaded coal train would be operated by a Sheridan crew from Sheridan to Huntley, then reposition the power and caboose at the opposite ends of the train for movement to Forsyth. This crew would then be transported by van to Laurel in fulfillment of pre-merger labor contracts. This added mileage incurred while not operating a train is termed as deadhead mileage. To complete the movement, a Forsyth crew would be deadheaded from Laurel to Huntley to operate this train to their home terminal. This process would then be reversed for trains returning empty. As you may assume, this was a time consuming process. Shortly thereafter, the Burlington Northern deemed it financially feasible to build a loop track four miles east of Huntley allowing a train to change line segments and direction, thus eliminating the switching at Huntley. Although this greatly reduced the running time of these trains, the crews still needed to deadhead to and from Laurel. Recognizing the uniqueness of this new traffic, in 1979, the United Transportation Union, the Brotherhood of Locomotive Engineers and the Burlington Northern Railroad entered into an agreement establishing an Interdivisional Run-Through between Sheridan and Forsyth. This agreement allowed for Sheridan crews to operate this traffic from Sheridan to Forsyth and return, and for Forsyth crews to operate from Forsyth to Sheridan and return, thus eliminating all of the accumulated deadhead mileage between Huntley and Laurel. To accommodate for the difference in mileage for the respective terminals, Forsyth mans 40 percent of these trains while Sheridan mans the remaining 60 percent. This pool is regulated by the Minneapolis dispatching office. On a daily basis, the regulator is provided with a line-up of trains (loaded and empty) and proceeds to allocate the appropriate manpower. At least once a year, local union officials from Sheridan and Forsyth meet with a representative from this dispatching office to discuss and sometimes modify the execution of the run-through. The attention and ongoing maintenance provided this run-through over the past 13 years has made it a success story among similar attempts. We believe that this testimony clearly illustrates that management and labor have cooperated to make the route currently servicing this coal traffic profitable and competitive. In consideration of this we feel that there is no demonstrated need to build a parallel line.

With regard to Tongue River Railroad's testimony that approximately 42 railroad jobs in Sheridan could be lost, we view this projection as extremely conservative and slanted by the applicant to downplay the impact on our community. 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 applicant's projection. Since our Interdivisional Run-Through Pool exclusively operates most of the coal traffic targeted by the Tongue River Railroad, 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 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 16 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. 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 25 percent of our active conductors, brakemen and switchmen in Sheridan. With respect to my fellow railroad union officers giving testimony in Sheridan, I have limited my job loss descriptions to those represented by the United Transportation Union. I will, however, go so far as to say that for every trainmen's position eliminated, one enginemen's position will also be eliminated. I must further state that these particular figures do not even attempt to include clerical, supervisory and other support positions directly related to this coal traffic and the employees delegated to operate them.

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 250 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 1985 National Contract that the parties representing this nations rail carriers requested and were eventually granted the removal of the most prohibitive languages 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 viewed as a wounded animal. The ramifications of such a job loss in our small community could be felt for generations to come."

It is also worthy to note that there is currently no public knowledge of any agreement between the TRRC and the Burlington Northern Railroad (BNRR) concerning construction or operation of the proposed line. This is questionably conspicuous since the TRRC would be a captive railroad and unable to operate without the full cooperation of the BNRR. TRRC has only implied that there is a relationship in place, but after numerous conversations with BNRR officials it is difficult to establish the existence of any rhetoric between the two entities. Proof of cooperative negotiations and their disposition should be imperative for consideration of permitting. It is therefore our opinion that it would be irresponsible and not within the public's best interest to even consider TRRC's request for permit without documented negotiations and/or an agreement.

It is also our belief that due to the soft coal market the original 89 miles already permitted to the TRRC will not be

constructed without the additional 41 mile extension. It would be cost prohibitive to develop and construct additional mines in the Ashland/Birney/Otter Creek area considering the competitive mines already in operation at Spring Creek, Decker, and the Powder River Basin. This would lend further support that TRRC's intent is to duplicate established transportation services and the proposed extension is nonessential to the future of the regional coal market. Subsequently, the permitting of the 41 mile extension would presumably be self-serving since it is certainly not in the best interest of the affected communities and market.

In closing, we would like to reiterate our request that Tongue River Railroad not be granted the right to construct this extension. In consideration of the concessions already made to service this region and the disruption to our communities, we do not believe it to be in anyone's best interest. The request for extension is not born of necessity, or even common sense, but of profit at the expense of those already providing service to and who most appreciate our pristine area. We truly believe that self-serving corporate interests were not evident at the conception of eminent domain and should not be party to them now.

Sincerely,

T. R. Shelby

T. R. Shelby
OTU State Legislative Director

Before the

INTERSTATE COMMERCE COMMISSION

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

TONGUE RIVER RAILROAD CO.--RAIL CONSTRUCTION AND OPERATION--ASHLAND TO DECKER, MONTANA

COMMENTS

GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington, DC 20036

Attorney for John D. Fitzgerald

Due Date: May 9, 1994

Before the

INTERSTATE COMMERCE COMMISSION

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

TONGUE RIVER RAILROAD CO.--RAIL CONSTRUCTION AND OPERATION--ASHLAND TO DECKER, MONTANA

COMMENTS

Preliminary Statement

Comes now John D. Fitzgerald,[1] on behalf of the United Transportation Union (UTU), General Committee of Adjustment, on lines of Burlington Northern Railroad Company (BN),[2] and submits these comments in response to the Supplement to Draft Environmental Impact Statement (SDEIS), served March 17, 1994, and subsequently noticed. 59 Fed. Reg. 13999-40 (March 24, 1994).

This protestant supports the "no action" alternative (SDEIS, pp. 20-21, 22-23), as is apparent from earlier submissions by M.M. Winter, predecessor to John D. Fitzgerald's position within the UTU, which should be deemed incorporated herein.[3]

1/ General Chairman for United Transportation Union (UTU) on lines of Burlington Northern Railroad Company (BN), with offices at 400 E. Evergreen Blvd., Vancouver WA 98660.

2/ This commentor is successor to M.M. Winter.

3/ In particular, see: Comments, 8/2/91; Supplemental Comments, 9/3/91; Pet. to Reopen, 4/20/92); Verified Statement, 6/16/92; Resp. to Interrogatories, 7/22/92; Reply to Motion to Strike, 8/17/92, as corrected 8/27/92; Testimony, Lame Deer Hearing, Tr. 54-56; Brief, 11/2/92; Reply Brief, 12/18/92.

1. The SDEIS attempts to resolve an issue posed by the Commission in its March 30, 1992 decision, i.e., whether the Commission imposed a condition in its Finance Docket Nos. 30186 and 30186 (Sub-No.1) decisions served September 4, 1985, and May 9, 1986, that the construction authority be exercised within one year. The SDEIS presumes to rule that applicant has not violated the condition for construction within one year, for the SDEIS claims the Miles City to Ashland line could be constructed today (SDEIS, p. 21):

> "The previously authorized 89-mile line from Miles City to Ashland, designed to serve new mines in Montana, could still be constructed and operated."

The Commission's March 30, 1992 decision stated:

> "The parties should address the section 10901 standards for public convenience and necessity. We also seek comments on two other issues....The second is whether this Commission imposed a condition in TRRC I that the construction authority granted therein be exercised within one year. The parties should address what consequences, if any, would arise from the violation of such a condition and whether TRRC undertook any action within a year."

This commentor in his Supplemental Comments, 9/3/91, at p. 2 and Atta., and in his Verified Statement, 6/16/92, at pp. 2-3, and App. 1, at pp. 2-3, pointed out that the 1985/1986 one-year condition has expired for the Miles City-Ashland segment, and included a letter dated June 13, 1986 from Tongue River's counsel to Commission Staff on this score.

The issue is one of law which should be resolved by the Commission, rather than by the environmental staff, since it is the agency's order which is involved.

2. The SDEIS would change the title of the proceeding to: Tongue River Railroad Company-Construction and Operation-Of an Additional Rail Line From Ashland to Decker, Montana. This is a change from the title of the case as instituted by the Commission, which caption this

B-65

pleading adopts. There is no "additional line" in the title of this proceeding. Again, ICC Staff would prejudge an issue the Commission has retained for decision by itself.

Respectfully submitted,

GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington, DC 20036

May 9, 1994 — Attorney for John D. Fitzgerald

Certificate of Service

I hereby certify I have served a copy of the foregoing upon TRRC's representative, Mr. Thomas Ebrery, Village Center I, Suite 165, 1500 Poly Drive, Billings, MT 59102.

Washington, DC — Gordon P. MacDougall

BEFORE THE
INTERSTATE COMMERCE COMMISSION

30784

FINANCE DOCKET NO. 31986 (Sub. No. 2)

TONGUE RIVER RAILROAD COMPANY – RAIL CONSTRUCTION AND OPERATION – ASHLAND TO DECKER, MONTANA

UNITED TRANSPORTATION UNION'S COMMENTS REGARDING THE SUPPLEMENT TO THE DEIS

The United Transportation (UTU) remains steadfastly opposed to the construction of the Tongue River Railroad proposed in the above-named Finance Docket. There is no public convenience or necessity requiring this line be constructed, and there is little, if any, public benefit to outweigh the devastating environmental impact that would occur should this line construction be permitted.

Under § 10901, the ICC must determine that "public convenience and necessity" require the construction of a new line. Convenience and necessity require a "strong or urgent public need." *See Utah Terminal Ry.*, 72 ICC 89 (1922). The Commission is entrusted with the duty to prohibit unnecessary expenditure and construction where an area is already adequately served. *Chesapeake & Ohio Ry. v. U.S.*, 283 U.S. 35 (1931).

In this matter before the Commission, there clearly is no public convenience or necessity requiring the construction of this line. Without the construction of this line, "the present movement of coal from the Decker Mines would be unaffected because Burlington Northern is already providing service to these mines via an alternative route." March 24, 1994 Interstate Commerce Commission Notice. Also, BN can more than easily handle any increase in coal production should that occur. The proposed line is parallel to BN's current line and is merely duplicative. Moreover, as the March 24, 1994 Notice states, TRR will "be able to serve new mines in the project area even if the Commission denied the proposed Extension."

The only public benefit asserted by TRR is that it will operate over a shorter route than BN. However, any savings from this line will not be given to the public. Rather, the rates for moving coal will remain the same. Shippers will see no savings. Moreover, the high cost of construction, $233 million, will limit TRR from providing any significant savings to the public or shippers for any time in the foreseeable future.

Further, the extreme adverse environmental impact that will be visited on this area by this construction will destroy the delicate natural balance that currently exists. The no-build alternative "would be environmentally neutral since construction and operation of the proposed Extension and the related environmental impacts would not occur." March 24, 1994 I.C.C. Notice. With regard to these impacts, this area is relatively pristine and should not be stripped of its beauty. The construction of this line would harm wildlife and their natural food sources. It would increase pollution and the risk of fire in the area. The line would cut between ranches and grazing lands and interfere with long sacred territory of native Americans.

All this harm cannot be outweighed by one corporation's interest in picking up and delivering coal that is already being picked up and delivered adequately.

Most importantly, however, is the adverse economic impact on these small communities. Between 166-172 railroad jobs could be lost. The ripple effect this would have on these small communities would have a crippling effect for years to come. One company's grab for profits cannot be justification for the destruction of lives and communities.

UTU urges the Commission for the reasons stated above to deny TRR the authority to build the Ashland-Decker line.

Respectfully submitted,

Daniel R. Elliott, III, Assistant General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, OH 44107
(216) 228-9400

B-66

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing United Transportation Union's Comments Regarding the Supplement to the DEIS has been served this 5th day of May, 1994, via first class mail upon the following:

Hon. Paul S. Cross
Administrative Law Judge
Interstate Commerce Commission
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Washington, D.C. 20423

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Daniel R. Elliott, III

From : UTU MT State Leg Director PHONE No. : 406 755 5116 May.09 1994 2:21PM P01

united transportation union
MONTANA STATE LEGISLATIVE BOARD

May 9, 1994

Dana White, Section of Environmental Analysis
Interstate Commerce Commission
Room 3214
Washington D.C. 20423

RE: Finance Docket 30186 (Sub No. 2)

The United Transportation Union has previously made it's objections to the granting of the construction authority for the proposed extension of the Tongue River Railroad known to the Interstate Commerce Commission.

Even with the considerable length of time that has passed since the U.T.U. filed it's original comments it should be emphasized that there has been no additional information filed that would be reason for the original objections to be modified.

In addition, it should be noted that the Montana State AFL-CIO has also previously opposed granting construction authority for the extension of the Tongue River Railroad and their position, which was authorized by convention resolution, has not been altered.

Construction of the proposed extension is not necessary and it will certainly cause an unwelcomed and unwanted inconvenience for many individuals.

The only acceptable option is the "no build" alternative.

Sincerely,

Fran Marceau
Montana State Legislative Director

DEPARTMENT
CORPS OF ENGINEERS

Planning Division

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

Dear Ms. White:

Thank you for requesting comments on the Supplement to the Draft Environmental Impact Statment, Finance Docket No. 30186 (Sub. No. 2), Tongue River Railroad Company - Construction and Operation - of an additional Rail Line From Ashland to Decker, Montana. Our comments in regard to this project are as follows.

In regard to alternative selection, page 17 of the Supplement states that the Corps generally favored the Four Mile Creek Alternative. Our general comments should not be construed to mean that we favor a particular alternative, especially when it would appear that a thorough alternative analysis would need to be conducted for reviewing agencies and the public in accordance with NEPA and the Section 404(b)(1) guidelines. NEPA requires that all reasonable alternatives be discussed and evaluated in the EIS. Section 404(b)(1) of the Clean Water Act also requires that all practical alternatives be discussed and evaluated. In most cases, one alternative is eventually selected that can represent both the reasonable NEPA alternative and practical Section 404(b)(1) alternative. At this time, we are unable to concur as to which alternative is environmentally preferable, based on the alternatives discussed and the information provided in the draft EIS or the draft Supplement. Reviewers must be able to make sound decisions based on a quantitative and qualitative evaluation of information concerning all alternatives, the present environment, and the project impacts to the environment of the area.

The present Burlington Northern Railroad (BNRR) is located on the uplands. The proposed rail line could also be located in an upland situation thereby avoiding impacts along 42 miles of riparian and aquatic habitats in the Decker to Ashland segment and 89 miles in the Ashland to Miles City segment. This alternative, however, was not considered in the draft EIS or draft Supplement.

We would also like to see the location of the present rail line on a more detailed map so we can adequately evaluate the no

action alternative. The destination and direction of the coal and other products that are currently shipped needs to be discussed so that alternatives can be compared and impacts such as fuel consumption, air quality, mileages, and so forth can be evaluated. For example, if the destination of the products shipped is a long distance, the mileage saved by the Tongue River Railroad Company (TRRC) may not be a significant issue. This kind of information needs to be presented in a comparative table form so the associated needs and impacts of the various alternatives can be easily seen.

The proposed Tongue River Railroad appears to be a small segment of railroad owned by the TRRC within the BNRR's network of track. The EIS needs to address what kind of company the TRRC is, if it would simply be track owned by investors and how it would operate. We can assume that the TRRC would run no trains and that this proposed track would be rented to railroad companies that do have locomotives and rail cars.

A discussion needs to be included regarding ownership of the current rail line that the present BNRR uses and the future relationship between that rail line and the proposed TRRC rail line. We would like to know what other goods are transported on this line and if it might eventually be abandoned should the Tongue River Railroad be constructed.

All Section 404 permits which were issued for the Miles City to Ashland segment of the proposed rail line have expired. Therefore, in order to proceed, the TRRC would be required to reapply for the necessary permits. It would therefore be necessary to reinitiate the permit process from a Section 404 standpoint. This could entail evaluating the project as one project from Miles City to Decker so the total picture can be accurately evaluated.

The impacts of this project based on the information provided in the draft EIS and draft Supplement are not clear. A visual picture of the proposed area and region is needed along with a visually descriptive discussion, complementing aerial photographs, and ground photographs that show the reader the habitats the TRRC would impact. These photographs and visual descriptions could show us important features of the riparian Tongue River valley, the aquatic resources (wetlands and waters of the United States), the tributary valleys, and the uplands both adjacent to the Tongue River and outside of the Tongue River breaks in the flatlands, as well as the location and terrain of the present railroad. These photographs could be representative of both the Miles City to Ashland Segment as well as the Ashland to Decker segment. It would be helpful to have several

representative photographs of the same habitat types to give the reader a proper perspective of the potential impacts. A segmental quantitative and qualitative analysis of the Tongue River valley habitat would also be helpful. We would encourage that site visits to the area include invitations to resource personnel from key agencies that would be obligated to review the environmental statements. These invitations could include the U.S. Fish and Wildlife Service, the Montana Game and Fish Department, the Corps of Engineers, Environmental Protection Agency and others if their involvement is significant. We also think that it would be beneficial for the resource agencies to be able to fly the project area to get a good overall feel for the Tongue River valley and its habitat as a whole in addition to evaluating the project at site-specific locations.

We envision the habitat in this area as one in which the majority of the wildlife is concentrated in an "oasis type" riparian habitat such as that provided in the Tongue River valley. Outside the Tongue River valley, the habitat is a fairly flat environment dominated by a sagebrush and short-grass ecosystem that stretches for miles in all directions. This harsh sagebrush and short-grass environment does not provide essential habitat for the many species that find refuge in, or require the habitat of, a river valley with deciduous and/or coniferous trees and shrubs. In addition, many species that do not live in the river valleys rely on the aquatic resources or habitat provided by the river valley during adverse environmental conditions. We also envision that the segment from Miles City to Ashland is more heavily used for agricultural purposes than the Ashland to Decker segment. Even though the habitat has been degraded in the lower segment, the remaining fringe of habitat adjacent to the river is none-too-less important. It is our understanding that the riparian habitat in this area of the region is especially limited and therefore particularly valuable. Measures should be taken to avoid impacts to habitats and ecotones in those regions where riparian habitat is limited and functionally valuable to the ecosystems. The draft report details species that may occur in the proposed Tongue River valley; however, the function of this gallery forest ecosystem might be evaluated detailing its importance to affected species that live in, adjacent to, or migrate through the valley.

Loss of habitat is severely causing a decline in populations of neotropical migratory birds. This project could directly cause additional losses of habitat due to construction and would indirectly cause losses through operational disturbances. The losses affecting neotropical migratory birds need to be discussed in the environmental statement.

Since the project was initially [illegible] of an additional pair of endangered bald eagles have selected a nesting site downstream from the Tongue River Dam. These eagles would also be using the Tongue River valley as a feeding area for themselves as well as for their young. This in itself attests to the valuable nature of the habitat that is provided along the Tongue River. Most bald eagles do not nest in the lower 48 States because of disturbance factors. Nesting is therefore a relatively uncommon occurrence. This eagle nest is located adjacent to the route presently proposed by the TRRC. As mentioned in the draft report, the Tongue River valley provides wintering habitat for eagles. Endangered species consultation with the U.S. Fish and Wildlife Service would be necessary to ensure there are no impacts to these birds or to their habitat. The biological assessment that the Interstate Commerce Commission would be required to prepare to discuss endangered species should be contained in the EIS as an appendix so that it would be available for public review.

The indirect effects of the proposed rail line on the habitat and wildlife caused by the intrusion resulting from construction and from operation of the rail line should be discussed. The habitat types impacted directly as well as indirectly would need to be evaluated from both a qualitative and a quantitative perspective.

The draft EIS states that the proposed rail line could serve existing and potential coal mines in the Tongue River and Powder River basin in Montana and Wyoming. It would initially provide services for three existing mines in the Spring Creek/Decker area and could provide services for the Montco Mine and four additional mines in the Ashland, Tongue River, or Otter Creek areas. New mines in the Ashland/Birney area would also develop in future years and would need to be serviced. It therefore becomes clear that the cumulative effects upon riparian habitat and wildlife should be discussed as these mines are developed and additional trains begin to operate on a more continuous basis. The draft EIS indicates that initially there would be 10 trains operating on this track per day servicing only the Decker Mines with a total of 18 trains projected for the future. This means that these trains would run on the average of about 1 per hour 365 days a year. Servicing additional mines implies that more than one rail line might be needed in the future to deal with moving the amount of coal that might be anticipated. It also implies that there would be much noise resulting from operation and maintenance of the rail line that would impact both aquatic-dependent and terrestrial wildlife the length of the Tongue River from Decker to Miles City, a distance of 131 miles. We would also be interested in knowing if this rail line might eventually

be extended to include the Sheridan, Wyoming, area, so coal could be shipped to the south or if the rail lines serving the coal fields in northeast Wyoming are interested in this extension.

Both the Interstate Commerce Commission and the Corps recognize that many railroad grades in this country exceed the 2 percent slope are operating safely. Many railroad companies routinely operate with slopes of 2.4 percent. There is one railroad in the eastern United States that has been operating a rail line with a slope of over 4 percent since the 1800's. This slope is unusually steep but this rail line continues to operate safely. TRRC's proposal is based on a slope of 0.52 as its only practical alternative from a safety and economical viewpoint.

The significance or insignificance of any air pollution caused by a train in this area could be discussed in greater detail.

The Section 404(b)(1) evaluation required for issuance of a Section 404 permit requires evaluation of all practical alternatives. A Section 404 permit can only be issued for the alternative that is the least environmentally damaging practical alternative.

As discussed with you by telephone on February 10, 1994, we need to ensure that the Section 404(b)(1) guidelines evaluate all practical alternatives, which would probably include upland dry bench alternatives. These upland alternatives must be evaluated in sufficient detail to ensure that the least environmentally damaging practical alternative is selected from an aquatic resource standpoint unless it can be proven that the upland impacts would be more deleterious. The ongoing alternative selection process for this project must be procedurally correct and complete, so that potential future problems will be avoided. This appears to be especially important in light of the fact that the aquatic and associated riparian resources in this region are limited.

Because this proposed project involves the construction of a railroad from Ashland to Decker, Montana, and is an extension of the proposed railroad from Miles City to Ashland, Montana, it is in reality a component of a larger proposed project which is the construction of a railroad from Miles City to Decker Montana. Because of this, NEPA requirements would necessitate that sufficient pertinent information concerning the Miles City to Ashland segment, such as status, proposed location, probable environmental impacts, and so forth, also be included in the EIS so that the reviewer can make an informed evaluation. Please send a copy of the final EIS for the Miles City to Ashland

segment to Mr. Galen Rasmussen, U.S. Army Engineer District, Omaha, Attention: CDDRO-PD-N, 215 North 17th Street, Omaha, Nebraska 68102-4978.

If you should you have any questions, please contact Mr. Robert McInerney in our Helena Regulatory Office at (406) 444-4670, Mr. Russell Rocheford in our Omaha Regulatory Office at (402) 221-4125 or Mr. Galen Rasmussen in our Omaha Planning Division at (402) 221-4594.

Sincerely,

Richard D. Gorton
Chief, Environmental
Analysis Branch
Planning Division

Copy Furnished:

Mr. Thomas Ebsary
Tongue River Railroad Company
Village Center I
Suite 165,
1500 Poly Drive
Billings, Montana 59102

Mr. Dick Blodnick
U.S. Environmental Protection Agency
Federal Building, Room 292
Drawer 10096
301 South Park
Helena, Montana 59626-0096

Mr. Steve Oddan
U.S. Fish and Wildlife Service
1501 14th Street West
Suite 230
Billings, Montana 59102

Mr. Pat Graham
Montana Fish, Wildlife, and Parks
1420 East Sixth
Helena, Montana 59620

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS OMAHA DISTRICT
215 NORTH 17TH STREET
OMAHA NEBRASKA 68102-4978

REPLY TO ATTENTION OF

Planning Division

February 25, 1994

FD 30196 (Sub No. 2)

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

Dear Ms. White:

This letter is in reference to the Tongue River Railroad extension from Ashland to the Decker Mine near the Tongue River Reservoir, Montana. As you are aware, the Corps responsibilities lie in assuring compliance with National Environmental Policy Act (NEPA) and Section 404 of the Clean Water Act. Section 404 of the Clean Water Act requires that a permit or permits be obtained from the Corps of Engineers when construction involves wetlands and/or waters of the United States. Those areas impacted would be included in the permit or permits that would be issued.

The Corps of Engineers (Corps), Omaha District, Planning Division has been striving to make all Environmental Impact Statements (EIS) decision documents for Section 404 permit compliance. Because of the requirements necessary for compliance with Section 404, it is important that everyone recognize that these guidelines must be used as early in the NEPA process as possible, since Section 404 requirements apply to the scoping process and to the selection of the appropriate alternative. Early applicetion of these guidelines should insure that NEPA and Section 404(b)(1) requirements in regard to the Section 404 permits are complete and therefore allow the permitting process to proceed without future difficulty or duplication of effort.

In issuing the Section 404 permit, the Corps must demonstrate compliance with the Clean Water Act's Section 404(b)(1) guidelines. These guidelines set forth a goal of restoring and maintaining existing aquatic resources. Permit issuance is allowed for only the least environmentally damaging practicable alternative. No discharge of materials into wetlands or aquatic resources of the United States can be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact to the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. Unless the proposed project is water dependent, it is assumed that there is an upland alternative available that would satisfy the requirement of being the least environmentally damaging alternative. This least damaging alternative is selected first by avoidance of impacts, then minimization of impacts, and lastly by compensatory mitigation. Compensatory

mitigation may not be used as a method to reduce impacts to create a least environmentally damaging practicable alternative.

As requested in our September 29, 1992, letter, we would like you to prepare a draft of the 404(b)(1) information for enclosure as an appendix in the Final EIS. All Corps Districts and field offices would prefer that the EIS and Section 404(b)(1) information be contained in a single document. Our regulatory office would be able to review the completed 404(b)(1) information prior to its inclusion in the draft EIS if you desire. We are enclosing a copy of the 404(b)(1) evaluation guidelines and a flexible 404(b)(1) information form for your use, as well as a copy of our Memorandum of Agreement with the U.S. Environmental Protection Agency on mitigation. When contained within the EIS as an appendix, reiterative responses to the 404(b)(1) information form can be referenced to sections in the EIS instead of being written in narrative form. If this is done, please recognize that some responses may not be able to be referenced since the EIS is a document written for the general public while the Section 404(b)(1) information would be technical in nature.

Wildlife, fisheries, wetland, etc., mitigation plans as well as their respective monitoring plans, should be included in the final EIS as appendices so they are available for public review. We are enclosing draft mitigation and monitoring guidelines for your use.

Even though Section 404(b)(1) information was sent with the September 29, 1992, letter, we are enclosing an information package you should find helpful. This package contains information that outlines permitting responsibilities and conditions under which a permit could be approved or denied, as well as the flexible 404(b)(1) information form which should be filled out in narrative and included as a draft in final EIS. Only after comments to the final EIS have been received and the Omaha District has approved the draft Section 404(b)(1) information will the Corps finalize a Section 404(b)(1) evaluation. The Record of Decision for approval or denial of the Section 404 permit for the Tongue River Railroad would then be issued by the Omaha District Corps District Engineer, and would be kept on file at the Omaha District.

As discussed with you by telephone on February 10, 1994, we need to insure that the Section 404(b)(1) guidelines evaluate all practical alternatives, which would include upland dry bench alternatives. These upland alternatives must be evaluated in sufficient detail to insure that the least environmentally damaging practical alternative is selected from an aquatic

resource standpoint unless it can be proven that the upland impacts would be more deleterious. The ongoing alternative selection process for this project must be procedurally correct and complete, so that potential future problems will be avoided. This appears to be especially important in light of the fact that the aquatic and associated riparian resources in this region are limited.

In addition to the 404(b)(1) analysis, the Section 404 decision will be based on a number of public interest factors. A typical list is also enclosed. To the extent that any of these are pertinent in your decision, they should also be in the EIS. Indirect as well as cumulative effects should also be evaluated.

Since this proposed project involves the construction of a railroad from Ashland to Decker, Montana, and is an extension of the proposed railroad from Miles City to Ashland, Montana, it is in reality a component of a larger proposed project which is the construction of a railroad from Miles City to Decker Montana. Because of this, NEPA requirements would necessitate that sufficient pertinent information concerning the Miles City to Ashland segment, such as status, proposed right of way locations, probable environmental impacts, etc., also be included in the EIS in order that the reviewer is able to make an informed evaluation.

Mr. Robert McInerney of our Helena office would be issuing the permit. Mr. McInerney's address and phone number is as follows.

Mr. Robert McInerney
U.S. Army Corps of Engineers
Helena Regulatory Office
c/o DNRC/CDD
1520 East 6th Avenue
Helena, Montana 59620-2301
(406) 444-6670

If you should you have any questions, please contact Robert McInerney in our Helena Regulatory Office, Russell Rocheford in our Omaha Regulatory Office at 402-221-4125, or Galen Rasmussen in our Omaha Planning Division at 402-221-4594.

Sincerely,

Richard D. Gorton
Chief, Environmental
Analysis Branch
Planning Division

Enclosures

B-69

Copy Furnished: (w/enclosures)

Mr. Thomas Ebzery
Tongue River Railroad Company
Village Center I
Suite 165
1500 Poly Drive
Billings, Montana 59102

Mr. Dick Blodnick
U.S. Environmental Protection Agency
Federal Building, Room 292
Drawer 10096
301 South Park
Helena, Montana 59626-0096

Mr. Steve Oddan
U.S. Fish and Wildlife Service
1501 14th Street West
Suite 230
Billings, Montana 59102

Mr. Pat Graham
Montana Fish, Wildlife,
and Parks Department
1420 East Sixth
Helena, Montana 59620

* PLEASE REVIEW THIS INFORMATION PACKET *

THE FOLLOWING IS SELECTED BASIC INFORMATION THAT IF NOT FOLLOWED COULD RESULT IN FUTURE DIFFICULTIES.

A PROPOSED PROJECT CAN ONLY BE PERMITTED IF IT COMPLIES WITH SECTION 404 REQUIREMENTS. IF THERE ARE ANY QUESTIONS, PLEASE CONTACT THE APPROPRIATE CORPS OFFICE.

THE PROPOSED ALTERNATIVE MUST PASS THE ALTERNATIVES TEST: This is an evaluation of the availability of practicable alternatives to the proposed discharge and/or excavation site which would have less adverse impact on the aquatic ecosystem.

1. In the EIS or EA, summary information should be provided for all alternatives considered but rejected, as well as detailed information for all alternatives that are available and practical. The proposed alternative MUST be the alternative that would result in the least amount of adverse impacts on the aquatic ecosystem and without other significant adverse environmental consequences.

2. If the proposed project is not water dependent and is located in a special aquatic site, it must be clearly demonstrated that there are no practicable alternative sites available. (For example; construction of a marina is a water dependent project while construction of a mine, road, or building is not.)

Mitigation for impacts must be sequenced or occur in the following order:

1. All impacts must be avoided to the extent practical by the selection of the least environmentally damaging practical alternative.

2. Any impacts must be minimized to the extent practical through project modification and permit conditions.

3. Only after avoidance and minimization may compensatory mitigation be considered.

The information requested must not deviate from the requirements outlined in 230.10 of the Section 404(b)(1) guidelines and all requirements must be met.

The Corps and EPA will also abide by the Memorandum of agreement concerning mitigation under the Section 404(b)(1) guidelines.

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
100 North Park, Suite 320

ES-61130-Billings
M.24-ICC Tongue River RR

May 4, 1994

Ms. Elaine K. Kaiser, Chief
Section of Energy and Environment
Interstate Commerce Commission
Washington, DC 20423

30186

Dear Ms. Kaiser:

We have reviewed the Supplement to the Draft Environmental Impact Statement for the Tongue River Railroad Company Finance Docket No. 30186 (Sub. no. 2) dated March 17, 1994. The purpose of the Supplement is to change the identified environmentally preferred alternative from the Four Mile Creek Alternative listed in the DEIS to the route proposed by the Tongue River Railroad Company (TRRC).

This change is being proposed because the Interstate Commerce Commission's Section of Environmental Analysis has now determined that the Four Mile Creek Alternative would have more unmitigable adverse consequences on the environment than the Tongue River Railroad Company proposed route through the Tongue River Canyon.

The Fish and Wildlife Service (Service) provided comments to the Interstate Commerce Commission (ICC) in a letter dated August 29, 1991. A summary of the Service's comments on the Four Mile Creek Alternative follows:

- Impacts to fish and wildlife resources and to Tongue River recreation would be less;
- Adverse impacts to Tongue River 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; re: sedimentation, toxic spills, herbicide use;
- Reduced impacts to wintering bald eagles;
- Four Mile Creek Alternative preferable from fish and wildlife perspective.

These comments still reflect the Service's position on the Four Mile Creek Alternative. We do not agree that the potentially significant environmental impacts addressed on pages 10 and 11 of the Supplement justify changing the environmentally preferred alternative. It is the Service's position that construction impacts associated with building the railroad through the canyon will be far more difficult to mitigate than adverse impacts associated

with the Four Mile Creek Alternative. Obviously, none of the adverse environmental impacts would occur if a "No Build" alternative was selected. In addition, two bald eagle nests, No. 41005-01 and No. 41005-02, that could be impacted by the proposed project have been established since 1991. Nest 41005-01 is about two miles downstream of the confluence of the Four Mile Creek and nest 41005-02 is about 3.5 miles upstream of the confluence. Nest 41005-02 was active last year and nest 41005-01 was active the year before. Nest 41005-02 is active again this year. It appears that construction of the Four Mile Creek alternative would cause less impacts to wintering and nesting bald eagles than the proposed route.

Regarding compliance with the Endangered Species Act (ESA) and the preparation of the biological assessment concerning threatened and endangered species. It is our understanding that Historical Research Associates (HRA) has been designated the "non-federal representative" for the ICC. The rules and regulations (50 CFR Part 402) which guide interagency cooperation in application of the ESA define "designated non-federal representative" as a person designated by the federal agency as a representative to conduct informal consultation and/or to prepare any biological assessment.

Biological assessments are required for "major construction activities" and are designed to assist federal agencies in determining whether section 7(a)(2) consultation should be initiated by identifying endangered or threatened species that may be present in the area affected by proposed federal actions and by identifying impacts of these projects on such species. Biological assessments should be viewed as a tool used to identify impacts to species or habitat so that a decision can be made as to whether a proposed action is likely to adversely affect listed species or critical habitat. Further, biological assessments can be used to determine whether a conference or formal consultation is required.

Procedures require HRA, as ICC's designated non-Federal representative, to submit to the Service a written request for a list of any listed/proposed species or designated/proposed critical habitat that may be present in the action area or HRA may submit to the Service a written notification of the species and critical habitat that are being included in the biological assessment.

The Service provided the ICC with a list of threatened and endangered species in correspondence dated December 28, 1989. This list was reconfirmed on August 29, 1991. Because more than 180 days has elapsed since our August 1991 list of species was provided to you and we have not reviewed biological assessments prepared by ICC or your designated agent, we are hereby reconfirming the list provided (i.e. bald eagle (Haliaeetus leucocephalus), peregrine falcon (Falco peregrinus), and black-footed ferret (Mustela nigripes)).

The Service further clarifies that ICC must retain the responsibility to initiate formal consultation along with its ultimate responsibility to ensure that its actions are not likely to jeopardize the continued existence of listed species. ICC's designation of HRA as their non-Federal representative to conduct informal consultation does not lessen these responsibilities or

Ms. Elaine K. Kaiser, Chief

eliminate ICC's duty to review its actions. ICC must still review the work products (informal consultation records and evaluate the scope and contents of biological assessments) and independently reach its own conclusions and decisions. BRA as the non-Federal representative may be responsible (at ICC's discretion) for the ground work (data compilation, synthesis, developing conservation measures, recommendations, and producing draft biological assessments for ICC). BRA must then submit draft biological assessments to ICC for their review and ICC must determine, based upon its review and analysis of the project biological assessment, if formal consultation is required because the ultimate responsibility for compliance with section 7 of the ESA remains with ICC.

During the last few days we have had two phone conversations with Mr. Alan Howell of BRA. Mr. Howell stated that it was his impression that the agencies had agreed that the biological assessment need not be done until they had completed the third phase of engineering and had obtained right-of-way. Please note that the Service in our December 24, 1991 letter regarding section 7 compliance stated our preference that section 7 compliance be completed and included in National Environmental Compliance Act documents. Since we now know that bald eagle nests have been established in close proximity to the preferred alternative identified in the Supplemental EIS and have additional data regarding black-footed ferrets we recommend that a biological assessment be prepared and section 7 compliance be completed and included in final NEPA documents. The Service is available to assist ICC in assembling existing data regarding threatened and endangered species occurrence in the proposed project area.

We would also like to mention that our office is an active member on the mitigation/enhancement team for the Northern Cheyenne Indian Water Rights Settlement Act(Act) of 1992. The goal of the team is to develop and implement the enhancement/mitigation aspects of the (Act) of 1992 with emphasis on maximizing fish and wildlife values while restoring, creating, and improving wetland/riparian habitat along the Tongue River in Montana. Congress has authorized the expenditure of $3.9 million with the proposed $1.1 million non-federal match for a total of $5.4 million to enhance fish and wildlife values along the Tongue River. These projects will need to be coordinated carefully to assure there are no unnecessary conflicts.

We appreciate the opportunity to comment at this point in project planning. Informal questions regarding this letter may be directed by Mr. Steve Oddan of our Billings Suboffice 406-657-6750.

Sincerely,

Kemper M. McMaster
Field Supervisor
Montana Field Office

cc: Suboffice Coordinator, USFWS, Fish & Wildlife Enhancement (Billings, MT)
Montana Dept. of Fish, Wildlife & Parks (Miles City, MT)
Steve Potts, EPA, (Helena, MT)

(44)

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Montana State Office
222 North 32nd Street
P.O. Box 36800
Billings, Montana 59107-6800

IN REPLY REFER TO
2800 (933)

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

May 10, 1994

Ms. Dana White
Section of Environmental Analysis
Room 3214
Interstate Commerce Commission
Washington, D.C. 20423

Dear Ms. White:

The Bureau of Land Management, Montana State Office, has reviewed the supplement to the draft environmental impact statement (DEIS) of the Tongue River Railroad Company (TRCC) - construction and operation of an additional rail line in Rosebud and Big Horn Counties, Montana. Following are our comments:

We believe there would still be considerable environmental damage to the Tongue River and associated riparian community. Additional measures are needed to mitigate lost riparian aquatic resources, including increased erosion from cut and fill slopes and subsequent nonpoint source water pollution caused by runoff from these slopes and loss of trees and habitat.

We also believe the current analysis does not adequately address the concerns of Native Americans raised in the DEIS. While the DEIS document indicates a more detailed analysis is planned, this analysis is not included in the supplement. We suggest a more complete analysis be conducted which fully analyzes 1) the Native American concerns and historic properties and, 2) what mitigation measures will be applied, if any, to offset the impacts to sites and values by selection of the proposed alternative.

The environmental impact statement should analyze the impacts of the proposed alignment, the Four-Mile Alternative, and the "no action" alternative in equal detail. The BLM can assist the Commission in identifying possible mitigation measures for riparian, floodplain, cultural, and recreation impacts.

Thank you for the opportunity to review this report. Questions may be addressed to Carol Schriver, (406) 255-2899.

Sincerely,

Francis R. Cherry, Jr.
Acting State Director

cc:
Mr. Thomas Ebsery, Billings, MT 59102

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII, MONTANA OFFICE
FEDERAL BUILDING, 301 S. PARK, DRAWER 10096
HELENA, MONTANA 59626-0096

Ref: 8MO

MAY 10 1994

May 9, 1994

RECEIVED
MAY 10 1994
SURFACE TRANSPORTATION BOARD

Ms. Dana White
Section of Environmental Analysis, Room 3214
Interstate Commerce Commission
Washington DC, 20423

Re: Supplement to DEIS for
Tongue River Railroad
Finance Docket No. 30186
(Sub-No. 2)

Dear Ms. White:

In accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, the U. S. Environmental Protection Agency, Region VIII, Montana Office (EPA) has reviewed the Supplement to the Draft Environmental Impact Statement (DEIS) for the Tongue River Railroad Company - Construction and Operation Of An Additional Rail Line From Ashland to Decker, Montana.

The original Tongue River Railroad DEIS was prepared by the Interstate Commerce Commission (ICC) in July 1992 to evaluate an application by the Tongue River Railroad Company (TRRC) to construct and operate a 41 mile rail line from Ashland to Decker, Montana. The ICC identified the Four Mile Creek Alternative as the environmentally preferred alternative in the DEIS, since it would avoid disturbing the environmentally sensitive ten mile section of the Tongue River below the Tongue River Reservoir/Dam, and would eliminate the need to construct five bridges across the Tongue River and a tunnel.

In this Supplement to the DEIS the ICC proposes now to identify the TRRC's Preferred Alternative as the environmentally preferred alternative. The Supplement states that the ICC's Section of Environmental Analysis (SEA) "now believes that the Four Mile Creek Alternative actually would have more adverse consequences on the environment than TRRC's proposed route, and that these consequences could not be successfully mitigated". The Supplement also states that the No Action Alternative "would be environmentally neutral".

The ICC specifically requests comments on the environmental preferability of TRRC's proposed route, the Four Mile Creek Alternative, the No Action Alternative, and any other feasible alternatives.

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The EPA does not agree with the ICC's identification of the TRRC's Proposed Alternative as the environmentally preferred alternative. We believe that the TRRC's prefarred 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 of 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. 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. In addition, there is insufficient information presented in the DEIS and the Supplement; to adequately identify and compare environmental effects, particularly effects upon fisheries, wildlife, and channel stability of the Tongue River; and to adequately identify and discuss relevant and reasonable mitigation measures necessary to protect the environment. Based on these findings, and in accordance with EPA criteria for rating a DEIS, this DEIS has been rated as category EO-2 (Environmental Objections - Insufficient Information).

Attached are detailed comments that led to our determination as well as EPA's rating criteria. If you have any questions regarding our input, please contact Mr. Steve Potts of my staff in Helena at (406) 449-5486 ext. 232.

Sincerely,

John F. Wardell, Director
Montana Office

Enclosures

cc: w/enclosures
Bob DeSpain/Phyllis Williams, EPA, Denver, 8WM-EA
Thomas Ebsery, TRRC, Billings
Kemper McMaster/Dale Harms, USFWS, Helena

3

Steve Oddan, USFWS, Billings
Pat Graham/John Mundinger, MDFWP, Helena
Don Hyppa, MDFWP, Billings
Bob McInerney, COE, Helena
Galen Rasmussen, COE, Planning Division, Omaha.
Jack Thomas/Abe Horpestad, WQB, Helena
Thomas Hughes, MDSL, Lands Division

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EPA REGION VIII MONTANA OFFICE COMMENTS

SUPPLEMENT TO 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

The Supplement identified several reasons why the ICC changed it's opinion on identification of the environmentally preferable alternative. These include: 1) additional cut and fill for the Four Mile Creek Alternative; 2) potential for erosion in the Four Mile Creek drainage that would be equal to or greater than that resulting from TRRC's proposed alignment; 3) additional impacts to ponderosa pine/juniper habitat (145 acres vs. 11 acres) and associated big game and bird habitat; 4) closer proximity to residences and a greater number of residence access road crossings with the Four Mile Creek Alternative; 5) additional fuel consumption and increased air pollution; 6) adjustments made to the TRRC's proposed alignment to reduce impacts upon the Tongue River Reservoir; 7) reevaluation of impacts of railroad bridges encroachments upon Tongue River flood levels; 8) provision of access to the Tongue River Dam for Montana Dept. of Natural Resources & Conservation (MDNRC) dam construction and maintenance; and 9) agreement to analyze and coordinate geotechnical investigations with (MDNRC) regarding railroad construction blasting impacts on the structural integrity of the Tongue River Dam.

The EPA disagrees with the ICC's conclusion that the TRRC's Preferred Alternative is the environmentally preferable alternative. The EPA believes that both the Four Mile Creek Alternative and the No Action Alternative have a lower magnitude of environmental impacts than TRRC's Preferred Alternative. Our reasoning and our comments on the Supplement to the DEIS follow:

1) The DEIS and Supplement do not provide adequate descriptions of existing environmental resources and values in the Four Mile Creek area. The ICC's conclusion that additional cut and fill, and erosion potential with the Four Mile Creek Alternative will result in greater environmental impacts than TRRC's Preferred Alternative can not be supported.

Erosional impacts to the Four Mile Creek aquatic resource can not be compared on the same basis as impacts to the Tongue River aquatic resource. The functions and values of the two aquatic ecosystems are not equal. It is stated in the DEIS that Four Mile Creek is an intermittent stream. Little other aquatic resources information for the Four Mile Creek drainage is disclosed in the DEIS or the Supplement. It would appear to us

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that impacts to fisheries in Four Mile Creek would be of less magnitude and significance than impacts to fisheries in the Tongue River. The Tongue River is a more valuable and environmentally sensitive aquatic resource.

2) It is stated that mitigation measures are available to address the soil loss and erosional impacts of the TRRC's Preferred Alternative. These mitigation measures, however, are not fully described in the DEIS or Supplement, accordingly their mitigation effectiveness can not be fairly evaluated. Also, if mitigation measures are available to address soil loss and erosional impacts of TRRC's Preferred Alternative in the Tongue River Canyon (with five bridges and a tunnel to be constructed), mitigation measures should also be available, and even more effective, for use in the intermittent Four Mile Creek drainage where there is less bridge and no tunnel construction.

3) It is stated that there will be a loss of an additional 134 acres ponderosa pine/juniper habitat with the Four Mile Creek Alternative. It is not clear, however, if the additional 134 acres of impacts to ponderosa pine/juniper habitat reflect any efforts to avoid and minimize impacts to these habitats? Can alignment adjustments with the Four Mile Creek Alternative reduce impacts to ponderosa pine/juniper habitat? Also, can these impacts be mitigated through restoration, enhancement, or replacement of this habitat? We also believe that additional impacts to ponderosa pine/juniper habitat with the Four Mile Creek Alternative are not likely to compensate for the increased additional adverse impacts to the environmentally sensitive Tongue River wetlands and riparian areas, and threats to river channel stability, likely to occur with TRRC's Preferred Alternative. Although it is difficult to compare or balance environmental trade-offs of wetlands/riparian impacts vs. ponderosa pine/juniper habitat impacts. We also did not find that the acreage of wetlands impacts of the alternatives have been quantified.

4) A thorough analysis of the Tongue River bridge crossings, and associated dredge and fill activities, on sedimentation and deposition patterns in the Tongue River, and on channel geomorphology should be carried out. It is noted in the DEIS Clean Water Act 404 permit(s) for placement of dredged or fill material in the waters of the United States, including wetlands, are likely to be required by the U.S. Army Corps of Engineers in order to construct the railroad. Since it appears to EPA that the environmental trade-offs associated with this project depend to a great extent upon careful analysis of impacts of dredge and fill activities, we recommend that the ICC prepare a draft 404(b)(1) analysis of the proposed dredge and fill activities and circulate this analysis for comment prior to publication of the

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FEIS. The 404(b)(1) Guidelines, found in 40 CFR Part 230, provide the substantive environmental criteria used by the Corps and EPA for review of proposed dredge and fill activities (see copy of an outline for a 404(b)(1) evaluation enclosed).

The 404(b)(1) analysis could then be used when 404 application(s) to the Corps are made. This would then reduce delay and avoid uncoordinated, duplicative efforts. It would also help avoid selection of an alternative in the EIS process that could not receive a 404 permit.

EPA Region VIII has prepared the following discussion to provide the ICC with information concerning the level of detail which we consider necessary in the draft 404(b)(1) evaluation in order to make the required 404(b)(1) compliance determination. For clarity and reference, the following discussion follows the organization of the 404(b)(1) Guidelines.

The EIS should address the relevant provisions of the Guidelines to determine whether the project complies with the Guidelines. The level of documentation should reflect the significance and complexity of the project. This documentation needs to address both individual and cumulative impacts. If sufficient information does not exist to make a reasonable judgement as to whether the proposed project will comply with the Guidelines, then the project may be concluded to be inconsistent with the Guidelines ($230.12(a)(3)(iv)).

Alternatives Analysis ($230.10(a))

The first step of this analysis is to determine the overall project purpose. Once that determination is made, alternative methods to accomplish the overall, or basic, project purpose need to be examined. The alternative with less adverse impact on the aquatic environment (as long as that alternative does not have other significant adverse environmental impacts) that still attains the overall project purpose could be designated the least damaging practicable alternative under the Guidelines. This alternative could also be designated the environmentally preferred alternative under NEPA. The level of detail necessary to make this determination is based on the information needed to ensure that the least damaging alternative has been portrayed.

Water quality standards, toxic effluents, and threatened and endangered species compliance ($230.10(b))

A project which would result in exceedances of State water quality standards or criteria set under Clean Water Act (CWA) §307 regarding priority pollutants would not be in compliance with the Guidelines. In the case of the Tongue River Railroad

Project the EIS analyses should document the project water quality impacts based on Montana Water Quality Standards (WQS). The ICC should seek the assistance of the MDHES-WQB to assure and document that project operations comply with water quality standards of the Tongue River and Four Mile Creek.

Demonstration of compliance with the Endangered Species Act is also a requirement of the Guidelines. A biological assessment should be carried out in cooperation with the U.S. Fish & Wildlife Service (USFWS) to assess impacts to threatened and endangered species, and their habitat, and to identify the alternative with the least potential impact upon threatened and endangered species.

Significant Degradation (§230.10(c))

The analysis necessary to make a determination concerning significant degradation includes information on project construction and operational adverse impacts on: human health and welfare issues (to include but not limited to municipal water supplies, fish, wildlife and special aquatic sites); aquatic life and other wildlife dependent on aquatic ecosystems (in particular the potential for transfer or spread of pollutants through biological, physical or chemical processes); aquatic ecosystem diversity, productivity and stability (such as loss of habitat, etc.); and recreational, aesthetic and economic values. The analyses need to present the factual determinations, scope and intensity of the project related adverse effects on these resources. The analyses need to consider the significance of adverse impacts from both an individual and cumulative viewpoint. The risk of accidents, derailments, and spills during railroad construction and operation that could result in significant degradation of the aquatic environment should be evaluated and disclosed.

Minimization of Potential Adverse Impacts (§230.10(d))

The proposed project needs to include all appropriate and practicable measures to minimize potential harm to the aquatic ecosystem in order to comply with the Guidelines. Mitigation methods can include avoidance of impacts, minimization of impacts and compensation for unavoidable impacts. These mitigation methods need to be pursued in the above listed sequence. The proposed mitigation needs to be as detailed as possible so that a determination of the implementability and effectiveness of the mitigation can be made. There needs to be assurances that mitigation necessary to reduce the project's impacts below the significant degradation threshold is capable of being implemented and will be effective once implemented.

National Wetlands Policy includes a goal that there be "no net loss" of the Nation's remaining wetlands, and a long-term goal of increasing the quality and quantity of the Nation's wetlands resource base. Dredging or filling of wetlands during railroad and bridge construction should be evaluated for wetlands impacts. The wetlands evaluation as noted above should follow a sequence of first avoiding impacts to wetlands to the maximum extent practicable, then minimizing impacts as much as possible, and lastly, providing compensation (i.e., mitigation) for unavoidable impacts to wetlands. Documentation of the efforts to avoid and minimize wetlands impacts should be demonstrated in the 404(b)(1) evaluation. Mitigation efforts directed at providing compensation for unavoidable impacts to wetlands should also be described.

The functions and values of unavoidably lost wetlands should be described. The goal of wetlands mitigation should be to replace the functions and values of unavoidably lost wetlands. Different wetland types provide different functions; for example a scrub-shrub wetland may provide excellent wildlife habitat, while an emergent wetland along the shores of a reservoir or river may provide good fisheries rearing habitat and flood storage. While most wetlands provide some valuable function, each provides a somewhat unique mixture of functions and values. For example, scrub-shrub wetlands that may be filled should not compensated for by the creation of emergent wetlands. Scrub-shrub wetlands generally provide good nesting and feeding habitat for a variety of wildlife species. The species that utilize these scrub-shrub wetlands could not simply relocate to the newly created emergent wetlands; rather there would be a loss of wildlife habitat for those species that depend upon the scrub-shrub areas. Instead the applicant must assess the functions and values of the wetlands to be impacted, and compensate for these particular functions and values.

EPA believes that criteria to measure the success of wetlands mitigation efforts should be developed. Functions and values of affected wetlands should be assessed using an acceptable method. A method of replacing functions and values is to presume that if the plant communities and arrangements in the mitigation wetlands closely approximate those that were present in the lost wetlands, the functions and values of the lost wetlands will be replaced. Accordingly, minimal criteria suggested by EPA for measuring success of wetlands mitigation efforts are as follows:

> a. Percent vegetative cover within the mitigation wetlands should be equal to or greater than the percent vegetative cover of the lost wetlands within a five year period.

> b. Vegetative species composition and diversity should closely approximate the composition and diversity of lost wetlands within a five year period. This close approximation shall be evaluated by comparison of plant numbers and vegetative species lists at the lost wetlands and the mitigation wetlands.

There should also be a clear commitment to take corrective actions if the pre-established criteria for success are not being met. These corrective actions will more than likely involve revegetation and/or additional efforts at successfully establishing wetland hydrology, and/or potentially carrying out wetland mitigation work at other sites. These corrective actions should be mandated by conditions placed in the 404 permit. Such conditions could also be placed in the ICC authorization for consistency.

We should also note that EPA and Corps regulatory policy is moving toward asking that wetland mitigation occur in advance of project impacts. This would reduce the temporary loss of wetlands functions, and reduce the uncertainty over whether mitigation will be successful in offsetting wetland losses.

5) We agree that the stated increased fuel consumption and air pollution associated with the Four Mile Creek Alternative is a valid factor that favors TRRC's Preferred Alternative. This information was also presented in the July 1992 DEIS. The Supplement suggests an additional factor that increased dispersion of air pollution may occur with TRRC's Preferred Alternative since coal trains will move faster than with the Four Mile Creek Alternative. The magnitude of this effect on train air pollutant dispersal should be modeled and better quantified in order to determine if this effect would meaningfully influence the environmental trade-offs and overall conclusions.

6) The purpose and need for the Tongue River Railroad, Ashland to Decker extension, is stated to be the transport of coal from the Spring Creek and Decker mines, and the transport of some coal presently being hauled by the Burlington Northern Railroad from the Gillette, Wyoming area. The effect on purpose and need, however, of alternate scenarios of regional coal demand and transport needs, and alternative rail coal transport opportunities has not been thoroughly evaluated and described in the DEIS and Supplement. We believe these matters affecting project need should be more thoroughly evaluated and discussed in the FEIS, especially in light of the safety and economic and environmental concerns that have been identified with the Four Mile Creek Alternative and the TRRC's Preferred Alternative, and in light of the apparent lack of need for the Tongue River Railroad that has been demonstrated to date by the failure to act

on the construction of the already authorized section of railroad from Miles City to Ashland. The fact that coal in the mining area to be served by the proposed Ashland to Decker, Tongue River Railroad, is presently moving to market without this railroad, does lead one to question need. The environmental impacts of both the Four Mile Creek Alternative and TRRC's Preferred Alternative should be compared and evaluated with the No Action Alternative in light of project need. We also question the statement in the Supplement that the No Action Alternative would be "environmentally neutral". The magnitude of environmental effects of the No Action Alternative would appear to be less than the other alternatives. It may be that the No Action Alternative would truly be most prudent selection at this time.

7) The adjustment of railroad alignment away from the Tongue River Reservoir was an appropriate means of reducing environmental and recreational impacts of TRRC's Preferred Alternative. We do not believe, however, that this adjustment adequately compensates for the other significant adverse impacts that are likely to occur in the Tongue River Canyon.

APPENDIX

DRAFT
SECTION 404(b)(1) EVALUATION

APPLICANT: _____

APPLICATION NUMBER: _____

PROJECT: _____

I. Project Description

A. Location.

B. General Description.

C. Authority and Purpose.

D. General Description of the Dredged or fill material.

1. General Characteristics of Material (grain size, soil type)
2. Quantity of Material (cu. yds)
3. Source of Material

E. Description of the Proposed Discharge Site(s)

1. Location map
2. Size Acres
3. Type of site (confined, unconfined, open water)
4. Types of Wetland Habitat (ephemeral, perennial), (river, lake, marsh, mudflat, pool and riffle complexes, vegetated shallows, springs, seeps, etc.)
5. Timing and Duration of Discharge

F. Description of Disposal Method (hydraulic, dragline, etc.)

II. Factual Determinations (Section 230.11)
Determinations should include both the individual and cumulative effects of the discharges for both the short term and long term.

A. Physical Substrate Determinations (consider items in sections 230.11 and 230.20)

1. Substrate Elevation and Slope
2. Compare fill material and substrate at discharge site
3. Dredged/Fill Material Movement
4. Physical Effects on Benthos, invertebrates, vertebrates (burial, changes in sediment type, etc.)
5. Erosion and accretion patterns
6. Other Effects
7. Actions Taken to Minimize Impacts (Subpart H)

B. Water Circulation, Fluctuation and Salinity Determinations

1. Water (refer to sections 230.11(b), 230.22 Water, and 230.25 Salinity Gradients; test specified in Subpart G may be required). Consider effects on:
   a. Salinity
   b. Water Chemistry (pH, etc)
   c. Clarity
   d. Color
   e. Odor
   f. Taste
   g. Dissolved Gas Levels
   h. Nutrients
   i. Eutrophication
   j. Others as appropriate

2. Current Patterns and Circulation (consider items in sections 230.11(b), and 230.23), Current Flow and Water Circulation.
   a. Current Patterns, drainage patterns, normal and low flows
   b. Velocity
   c. Stratification
   d. Hydrologic Regime
   e. Aquifer recharge

3. Normal Water Level Fluctuations (tides, river stages, flooding, flood control functions, etc.) (consider items in sections 230.11(b) and 230.24)

4. Salinity Gradients (consider items in sections 230.11(b) and 230.25)

5. Actions That Will Be Taken to Minimize Impacts (refer to Subpart H)

C. Suspended Particulate/Turbidity Determinations

1. Expected Changes in Suspended Particulates and Turbidity Levels in Vicinity of Disposal Site (consider items in sections 230.11(c) and 230.21)

2. Effects (degree and duration) on Chemical and Physical Properties of the Water Column (consider environmental values in section 230.11(c) and 230.21, as appropriate)
   a. Light Penetration
   b. Dissolved Oxygen
   c. Toxic Metals and Organics
   d. Pathogens
   e. Aesthetics
   f. Others as Appropriate

3. Effects on Biota (consider environmental values in sections 230.21, as appropriate)
   a. Primary Production, Photosynthesis
   b. Suspension/Filter Feeders
   c. Sight Feeders

4. Actions Taken to Minimize Impacts (Subpart H)

D. Contaminant Determinations [consider requirements in section 230.11(d)]

1. The following information has been considered in evaluating the biological availability of possible contaminants in dredged or fill material.
   a. Physical characteristics of fill or dredge materials.
   b. Hydrography in relation to known or anticipated sources of contamination.
   c. Results from previous testing of the material of similar material in the vicinity of the project.
   d. Known, significant, sources of persistent pesticides from land runoff or percolation.
   e. Spill records for petroleum products or designated (Section 311 of CWA) hazardous substances.
   f. Other public records of significant introduction of contaminants from industries, municipalities or other sources.
   g. Known existence of substantial material deposits of substances which could be released in harmful

quantities to the aquatic environment by man-induced discharge activities.
   h. Any other sources, (specify).

2. An evaluation of the appropriate information in 3s above indicates that there is reason to believe the proposed dredge or fill material is not a carrier of contaminants, or that levels of contaminants are substantively similar at extraction and disposal sites and not likely to contaminate. Therefore the material meets the testing exclusion criteria. (Include this paragraph when applicable)

E. Aquatic Ecosystem and Organism Determinations (use evaluation and testing procedures in Subpart G, as appropriate)

1. Effects on Plankton
2. Effects on Benthos
3. Effects on Nekton
4. Effects on Aquatic Food Web (refer to section 230.31)
5. Effects on Special Aquatic Sites (discuss only those found in the project area or disposal site).
   a. Sanctuaries and Refuges (refer to section 230.43)
   b. Wetlands (refer to section 230.41)
   c. Mud Flats (refer to section 230.420)
   d. Vegetated Shallows (refer to section 230.43)
   e. Riffle and Pool Complexes (refer to section 230.45)
6. Effects on Threatened and Endangered Species and their habitat (refer to section 230.30) (habitat refers to breeding, nesting, escape, food, travel, loafing etc.)
7. Effects on other Wildlife, mammals, birds, herpetiles, fish, invertebrates, candidate endangered species, state endangered species and species of special interest or concern and their habitat (refer to section 230.32)
8. Actions taken to Avoid and Minimize Impacts (refer to Subpart H)
10. Compensatory Actions taken to Mitigate Impacts
11. Monitoring of mitigative actions

F. Proposed Disposal Site Determinations (mixing zones)

1. Mixing Zone Determination (consider factors in section 230.11(f)(2))
   a. Depth of water at the disposal site
   b. Current velocity, direction, and variability at disposal site
   c. Degree of turbulence
   d. Water column stratification

e. Discharge vessel speed and direction
f. Rate of discharge
g. Ambient concentration of constituents of interest
h. Dredged material characteristics (constituents, amount, and type of material, settling velocities.
i. Number of discharges per unit of time
j. Other factors affecting rates and patterns of mixing (specify)

2. An evaluation of the appropriate factors in F(1) above indicate that the disposal site and or size of mixing zones (are) (are not) acceptable.

3. Actions to Minimize Adverse Discharge Effects.

All appropriate and practicable steps (have) (have not) been taken, through application of recommendation of Section 230.70 - 230.77 to ensure minimal minimal adverse affects of the proposed discharge. List actions taken.

4. Determination of Compliance with Applicable Water Quality Standards (present the standards and rationale for compliance or non-compliance with each standard.

5. Potential Effects on Human Use Characteristic
a. Municipal, private and potential water supply (refer to section 230.50)
b. Recreational and Commercial Fisheries (refer to section 230.51)
c. Water Related Recreation (refer to section 230.52)
d. Aesthetics of the aquatic ecosystem (refer to section 230.53)
e. Parks, National and Historical Monuments, National Seashores, Wilderness Areas, Research Sites, Refuges, Sanctuaries and Similar Preserves (refer to section 230.54)

G. Determination of Cumulative Effects on the Aquatic Ecosystem
(consider requirements in section 230.54)

H. Determination of Secondary effects on the Aquatic Ecosystem
[(consider requirements in section 230.11(h))

III. Findings of Compliance

A. Adaptation of the Section 404(b)(1) guidelines to this Evaluation

This evaluation (does not) (does) deviate from the requirements outlined in 230.10 and all requirements (have been) (have not been) met.

B. Evaluation of Availability of Practicable Alternatives to the Proposed Discharge Site Which Would Have Less Adverse Impact on the Aquatic Ecosystem (Alternatives test.)

1. Briefly discuss the alternatives considered and that are available and practicable and state why the one selected would result in the least amount of adverse impacts on the aquatic ecosystem and without other significant adverse environmental consequences. Reference should be made to other appropriate sections on alternatives in the EIS or Main reports when the 404 Evaluation is contained in these documents).

2. If the project is not water dependant and is located in a special aquatic site, clearly demonstrate that there are no practicable alternative sites available.

C. Compliance with Applicable State Water Quality Standards

D. Compliance with Applicable Toxic Effluent Standard or Prohibition Under Section 307 of the Clean Water Act

E. Compliance with Endangered Species Act of 1973

F. Compliance with Specifies Measures for Marine Sanctuaries Designated by the Marine Protection, Research, and Sanctuaries Act of 1972
Not applicable.

G. Evaluation of Extent of Degradation of the Waters of the United States

1. Significant Adverse Effects on Human Health and Welfare
a. Municipal and Private Water Supplies
b. Recreation and Commercial Fisheries
c. Plankton
d. Fish
e. Shellfish
f. Wildlife (vertebrate and invertebrate)
g. Special Aquatic Sites

2. Significant Adverse Effects on Life Stages of Aquatic Life and Other Wildlife Dependent on Aquatic Ecosystems

3. Significant Adverse Effects on Aquatic Ecosystem, Ecosystem Diversity, Productivity and Stability

4. Significant Adverse Effects on Recreational, Aesthetic and Economic values.

H. Appropriate and Practicable Steps Taken to Minimize Potential Adverse Impacts of the Discharge on the Aquatic Ecosystem.

I. Evaluation Responsibility:

Prepared by: _____

Date:

Approved by: _____

Chief, Regulatory Branch
Department of the Army
Corps of Engineers, Omaha District

Date:

J. FINDINGS

On the Basis of the Guidelines, the Proposed Disposal Site(s) for the Discharge of Dredged or Fill Material (specify which) is (select one)

1. Specified as complying with the requirements of these guidelines.

2. Specified as complying with the requirements of these guidelines, with the inclusion of appropriate and practical conditions to minimize pollution or adverse affects on the aquatic ecosystem. These conditions are .....

3. Specified as failing to comply with the requirements of these guidelines because (select one)

a. There is a practicable alternative to the proposed discharge that would have less adverse effect on the aquatic ecosystem and that alternative does not have other significant adverse environmental consequences.

b. The discharge has resulted in significant degradation of the aquatic ecosystem under 40 C.F.R. 230.10(b) or (c).

c. The discharge does not include all appropriate and practicable measures to minimize potential harm to the aquatic ecosystem, namely .....

d. There is not sufficient information to make a reasonable judgement as to whether the proposed discharge will comply with the guidelines.

Date: _____

Chief, Operations Division
Department of the Army
Corps of Engineers, Omaha District

B-75

U.S. Department
of Transportation
**Federal Railroad
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

MAR 18 1996

Ms. Elaine K. Kaiser
Chief, Section of
Environmental Analysis
Office of Economic and
Environmental Analysis
Surface Transportation Board
Washington, D.C. 20423

Dear Ms. Kaiser:

Thank you for your letter of February 13 concerning STB Docket No. 30186 - Tongue River Railroad. The basic question in that letter is whether it is possible to operate loaded coal trains safely over a 2.31 percent descending grade. The answer is that this is indeed feasible; it is done elsewhere in the industry every day. May I suggest, though, that future train operation over such a grade situation be carried out in strict conformance with established industry procedures governing train operations in heavy grade territories. Additionally, it would be prudent to require that trains descending this grade be equipped with a operable two-way, end-of-train device to help assure adequate train braking in case of brake system malfunction.

If there is any way that we can assist the board in the future, please feel free to call on us.

Please accept my apologies for this tardy reply to your letter.

Sincerely,

Edward R. English
Director, Office of Safety
Assurance and Compliance

F.D. 30186 (SUB NO. 2)

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

FINAL ENVIRONMENTAL IMPACT STATEMENT

APPENDIX C

BIOLOGICAL ASSESSMENT AND BIOLOGICAL OPINION

BIOLOGICAL ASSESSMENT

For Endangered or Threatened Species,
Tongue River Railroad Company
Additional Rail Line From Ashland to Decker, Montana

Prepared by

Western Technology and Engineering, Inc.
Helena, Montana
&
Historical Research Associates, Inc.
Missoula, Montana

for
Interstate Commerce Commission
Section of Environmental Analysis

June 1995

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BIOLOGICAL ASSESSMENT
For Endangered Or Threatened Species,
Tongue River Railroad Company
Additional Rail Line From Ashland to Decker, Montana

June, 1995

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CONTENTS (continued)

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FIGURES

BIOLOGICAL ASSESSMENT
For Endangered Or Threatened Species,
Tongue River Railroad Company
Additional Rail Line From Ashland to Decker, Montana

INTRODUCTION

On November 17, 1989 the Interstate Commerce Commission (ICC) published in the Federal Register its intent to prepare an Environmental Impact Statement (EIS) for the Tongue River Railroad Company's (TRRC) proposed construction and operation of a 41-mile rail line between Ashland and Decker, Montana (hereinafter called the TRRC Extension). The TRRC Extension would extend the already approved but not yet built 89-mile rail line from Miles City to Ashland, Montana. The primary purpose of the TRRC Extension would be to allow the shipment of coal from operating mines near Decker, Montana north to the previously approved Terminus Point 1 near Ashland.

On December 28, 1989 the U.S. Fish and Wildlife Service (USFWS), which administers the Endangered Species Act (ESA), notified the ICC that three species, all listed as endangered, could potentially occur in the area to be affected by the TRRC Extension (Palawski, 1989): 1) the bald eagle (*Haliaeetus leucocephalus*) could nest along the Tongue River, and could occur as a migrant and winter resident (note: the bald eagle has since been recommended for downlisting from endangered to threatened); 2) the peregrine falcon (*Falco peregrinus*) could occur as a migrant; and 3) the black-footed ferret (*Mustela nigripes*) could occur in black-tailed prairie dog (*Cynomys ludovicianus*) colonies. On November 10, 1994 the USFWS added the pallid sturgeon (*Scaphirhynchus albus*), which could occur in the lower Tongue River, to this list (McMaster, 1994).

As part of its responsibilities under the ESA, the ICC must submit to the USFWS a Biological Assessment to address the potential effects of the TRRC Extension on these

four species, and to propose measures to mitigate these effects. On January 23, 1990 the ICC designated Historical Research Associates, Inc. (HRA) to be the ICC's non-Federal representative to prepare the Biological Assessment (Kaiser, 1990). In turn, HRA contracted Western Technology and Engineering, Inc. (WESTECH) to write the Biological Assessment in October, 1994.

HRA began contacts with the USFWS, Montana Department of Fish, Wildlife and Parks (MDFWP), area residents and other knowledgeable parties regarding the occurrence and habitat of these listed species along the proposed TRRC Extension in 1990. On July 29, 1991 the ICC requested additional input from the USFWS on the EIS. The USFWS used its reply on August 29, 1991 to reconfirm the list of species to be addressed by the Biological Assessment (Harms, 1991a).

HRA's contacts with various parties revealed that little was known about bald eagle nesting along the Tongue River. HRA conferred with the USFWS and it was agreed that surveys for wintering and nesting bald eagles along the Tongue River should be conducted (Newell, 1991). The USFWS formally agreed with this procedure in a letter dated December 24, 1991 (Harms, 1991b). These surveys were conducted in February and April, 1992.

In April 1992 the USFWS released its Fish and Wildlife Coordination Act report for the Tongue River Dam Rehabilitation Project (USFWS, 1992), a project not related to the TRRC Extension. This report, and a subsequent update letter (Harms, 1992), summarized the known information on the occurrence of threatened or endangered species in an area which encompassed the proposed TRRC Extension route.

In July 1992, the ICC issued the draft Environmental Impact Statement (DEIS) for the Extension (ICC, 1992). In compliance with National Environmental Policy Act (NEPA) requirements, the DEIS considered alternatives to the proposed route for the Extension. The DEIS concluded that one of these alternatives, called the Four Mile

Creek alternative, was less environmentally sensitive than the proposed route. After receipt of comments on the DEIS, however, the ICC reviewed its comparison of the Four Mile Creek alternative with the proposed route. In a supplement to the DEIS (ICC, 1994), the ICC determined that the Four Mile Creek alternative would result in significantly more environmental effects than the proposed route, including greater land disturbance, increased soil erosion, greater deforestation, greater impacts to big game and breeding bird populations, increased air pollution, and more impact to human residences. In addition, TRRC realigned the proposed TRRC Extension route in the vicinity of the Tongue River Dam and Tongue River Reservoir, to mitigate some of the potential impacts from the original route that were identified in the DEIS. Therefore the proposed route of the TRRC Extension, as modified in the supplement to the DEIS, appears to be a more feasible alignment than the Four Mile Creek alternative.

Following discussions between the ICC and the USFWS, the ICC requested HRA to submit a copy of the first draft of the Biological Assessment to the USFWS to review in mid-January, 1995. This was followed by a February 2, 1995 meeting between USFWS, WESTECH and TRRC personnel to discuss revisions to the first draft. A second draft was submitted to the USFWS on March 3, 1995. On March 24, 1995 USFWS, TRRC and WESTECH personnel discussed revisions to the second draft during a conference call. At that time it was apparent that concerns regarding all species except the bald eagle had been resolved. A third draft of the bald eagle portions of the Biological Assessment was submitted to the USFWS on April 11 and discussed during a meeting on April 13, 1995. A fourth draft of the bald eagle section was then written. Between April 18 and May 11, 1995 TRRC, HRA and WESTECH asked several members of the Montana Bald Eagle Working Group (MBEWG) to review the fourth draft, and for recommendations regarding the bald eagle. The MBEWG is an interagency committee established in 1982 to assist in the achievement and maintenance of goals and objectives for recovery of bald eagles in Montana, as presented in the Recovery Plan for the Pacific Bald Eagle (USFWS, 1986), and to

coordinate management, research and information exchange on bald eagles (MBEWG, 1994). MBEWG members who reviewed the bald eagle portions of this Biological Assessment included Dennis Flath, Montana Department of Fish, Wildlife and Parks; Rob Hazlewood, U.S. Fish and Wildlife Service; Dan Hinckley, Bureau of Land Management; and Lorin Hicks and Brian Gilbert, Plum Creek Timber Company. Comments representative of the MBEWG's input are contained in a letter from Dennis Flath dated May 17, 1995 (Appendix I).

The Biological Assessment is not an alternatives analysis document, but is concerned with the agency's preferred action. Therefore this Biological Assessment will address the TRRC Extension from the Ashland Terminus Point 1 south to the Decker mines, as described in the supplement to the DEIS (ICC, 1994).

DESCRIPTION OF THE PROJECT

The primary purpose of the TRRC Extension would be to transport coal from existing mines near Decker, Montana to the previously approved but not yet built rail line between Miles City and Terminus Point 1 near Ashland, Montana. From Terminus Point 1, the TRRC Extension would follow the Tongue River drainage approximately 41 miles south, passing on the west side of the Tongue River Reservoir, to its connection with Spring Creek Coal Company's rail line as well as connections to the East Decker and West Decker coal mines (Figure 1).

In terms of construction and operation, the TRRC Extension would be similar to other rail lines that serve coal mines in southeastern Montana. The track would be comprised of 136-pound continuous welded rail on treated hardwood ties, resting on 12 inches of ballast and 15 inches of sub-ballast. The right-of-way (ROW) would vary between 75 and 300 feet in width, and would average 200 feet. Facilities associated with the rail line would include road and railway crossings, culverts, cattle passes, signal and communication facilities, etc. There would be two 8500-feet

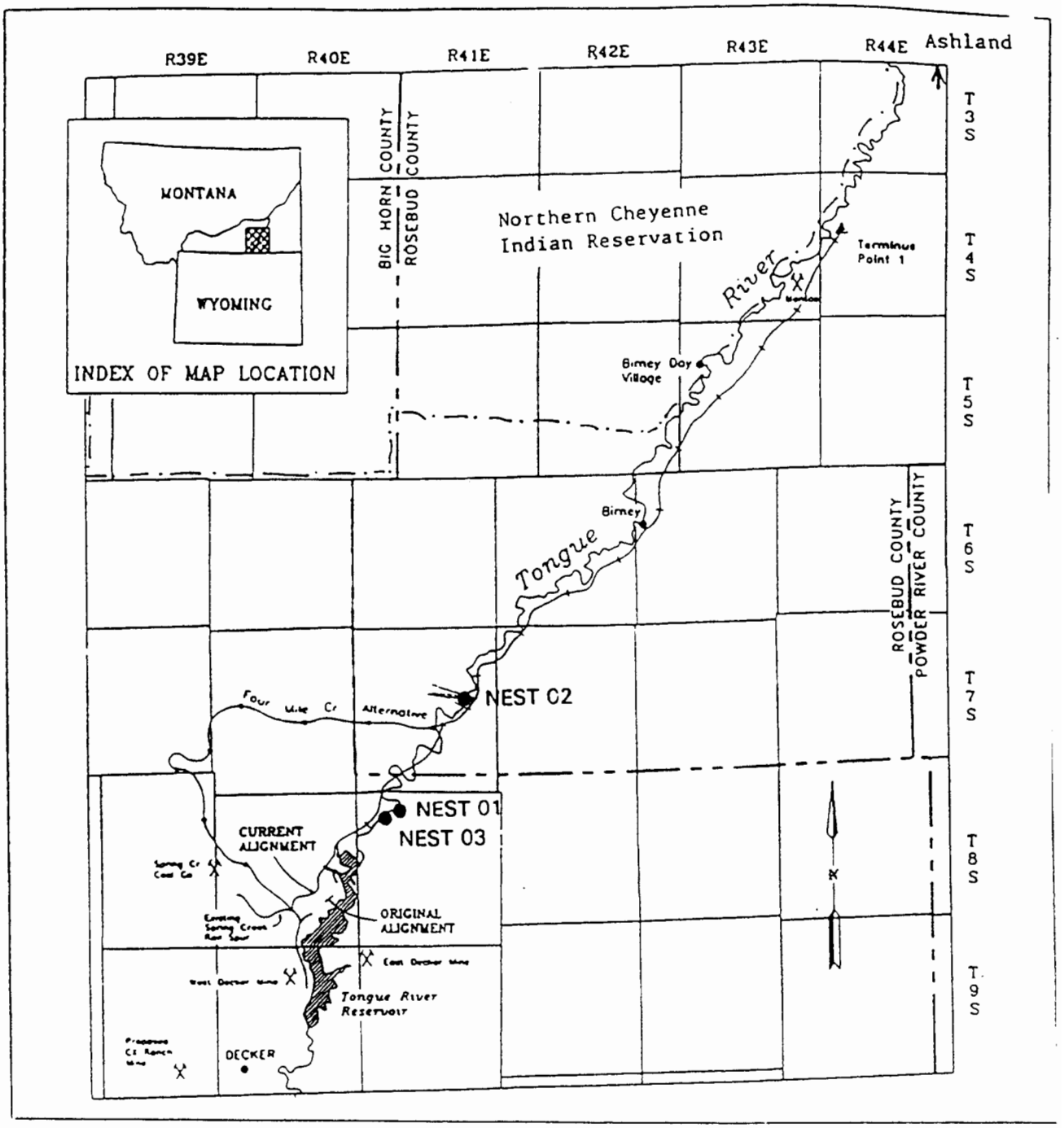

Fig. 1. Location of the TRRC Extension (adapted from ICC, 1994) and bald eagle nests 01, 02 and 03.

passing sidings; at these two locations and at one other site, shorter tracks for equipment and car storage would also be constructed.

There would be 16 crossings of ephemeral streams, using culverts designed to withstand a 25-year flood event. There would be one bridge (150 feet long) over the Hanging Woman Creek road, one bridge (400 feet long) over Hanging Woman Creek, and five bridges over the Tongue River (one would be approximately 400 feet long, while the others would be approximately 500 feet long). All bridges over waterways would be designed to withstand a 100-year flood event.

There would also be a tunnel (about 600 feet long) built through a high ridge between two of the Tongue River bridges.

Depending on weather, construction would most likely occur from April through October over a 3-year period. Construction crews would live in camps at Ashland, Birney and Decker. During construction there would be a variety of heavy equipment operating within the ROW to clear existing vegetation, salvage topsoil, grade/cut/fill the ROW, prepare the railbed, and reclaim and revegetate disturbed areas and sideslopes. Track would then be laid from north to south, followed by ballast placement and final clean up.

Once the TRRC Extension is in operation, it would operate 24 hours a day, 365 days a year. Initially there would be 4-5 round trips of unit trains (one unit train would be comprised of three locomotives and 112-125 coal hopper cars) each day. Trains would operate at speeds up to 50 mph.

Periodic maintenance of the rail line and ROW would be required, depending on the amount of train traffic. Access to the ROW would be limited to public grade crossings or to private grade crossings where access agreements would be made with the

landowner. Maintenance, including mechanical or herbicidal vegetation control, would primarily be accomplished with equipment travelling along the rail itself.

DESCRIPTION OF THE AFFECTED AREA

For the purposes of this Biological Assessment, the area to be potentially affected by the TRRC Extension is defined as the Tongue River valley along the preferred route from Terminus Point 1 near Ashland, to the mines near Decker. The reasons for this definition are: 1) any effects on the four species considered by this Biological Assessment, as a result of construction of the TRRC Extension, would be limited to the river valley. Use of neighboring uplands by these species would not be affected by construction; 2) effects as a result of operation of the TRRC Extension would largely be limited to the Tongue River valley. Effects outside the valley, such as recreational shooting of prairie dogs in upland habitats by rail employees, would be highly speculative and unpredictable; and 3) it is reasonable to assume that any effects to these four species at the existing mines near Decker which would be served by the TRRC Extension, have already occurred as a result of the construction and operation of those mines.

The Tongue River begins in the Big Horn Mountains in Wyoming and flows north to its confluence with the Yellowstone River at Miles City, Montana. It drains an area of about 5,379 mi^2, of which 70 percent is in Montana. At its confluence with the Yellowstone River, the Tongue River has an average annual flow of about 420 cubic feet per second (cfs) (Elser et al., 1977).

Within the area potentially affected by the TRRC Extension, the Tongue River is greatly influenced by the Tongue River Dam and Reservoir, which regulate downstream flow. The dam was constructed in 1940 to store water for downstream irrigation; the impoundment covers about 3,500 surface acres (Elser et al., 1977). In the TRRC Extension area downstream from the reservoir, most tributaries of the Tongue River

are ephemeral. The TRRC Extension will cross only one perennial tributary, Hanging Woman Creek (ICC, 1992).

Most of the annual flow of the Tongue River comes from seasonal snowmelt runoff in the Big Horn Mountains, with half the annual flow occurring from May to July. In contrast, tributaries below the reservoir derive their most significant flows during and after precipitation. In most years these tributaries do not have consistent flows associated with snowmelt runoff, and exhibit little base flow (ICC, 1992).

Immediately downstream from the dam, the Tongue River supports a trout fishery. This fishery is quickly supplanted by a more typical prairie river fishery comprised of native species such as sauger (*Stizostedion canadense*) and channel catfish (*Ictalurus punctatus*), supplemented with introduced species such as smallmouth bass (*Micropterus dolomieui*) and northern pike (*Esox lucius*).

The valley is defined by hilly, sometimes rugged uplands that rise 200-500 feet above the valley floor. In the narrower upstream portion of the TRRC Extension area, these hills are close to the floodplain and are generally forested with ponderosa pine (*Pinus ponderosa*) and Rocky Mountain juniper (*Juniperus scopulorum*), particularly on north and east facing slopes. Downstream, steeper forested hills are interspersed with rolling grassland and shrubland benches.

The Tongue River meanders across the valley bottom. Its immediate banks are vegetated by deciduous forest in various stages of succession, from shrubs to mature cottonwood (*Populus deltoides*) gallery forest. Portions of the adjoining valley bottom have been developed for irrigated and dryland hay and crop production.

The combination of upland, riparian, agricultural and aquatic habitats supports a good diversity of terrestrial and aquatic wildlife. Coal mine environmental studies in the vicinity have identified at least 166 species of birds, 44 mammals, 10 reptiles and four

amphibians, while the Tongue River Reservoir supports 24 species of fish, and the Tongue River along the TRRC Extension route supports 23 species of fish (ICC, 1992).

The primary land use of the Tongue River valley along the TRRC Extension route is agriculture, particularly cattle grazing and hay production. There are operating coal mines near Decker (the south end of the TRRC Extension) and potential coal mines near Ashland (the north end of the TRRC Extension). Most human residences along the route are associated with ranches; there are small communities at Birney and Birney Day Village (on the Northern Cheyenne Indian Reservation). The Reservation's east boundary is the Tongue River. The TRRC Extension will not cross Reservation lands.

CURRENT STATUS OF ENDANGERED SPECIES ALONG THE TRRC EXTENSION

As discussed earlier, the bald eagle, black-footed ferret, peregrine falcon and pallid sturgeon are listed as endangered, although the bald eagle has been recommended for downlisting to threatened. No species proposed for listing were identified by USFWS for analysis in this Biological Assessment.

Black-footed ferret

No black-footed ferrets are known to occur in the Tongue River valley in the vicinity of the TRRC Extension. Ferrets were reintroduced into Montana in autumn 1994, but the reintroduction site is more than 140 air miles northwest of the TRRC Extension route. The route is also more than 180 air miles from the Wyoming reintroduction site, and more than 120 air miles to the last known site of a naturally occurring ferret population near Meteetsee, Wyoming. Therefore it is highly unlikely that black-footed ferrets from these three locations would disperse to the TRRC Extension vicinity.

Critical habitat of the black-footed ferret is considered to be prairie dog colonies (Biggins et al., 1985). In the Tongue River valley, black-tailed prairie dogs build colonies in grasslands on gentle to rolling slopes on benches adjacent to the river, as well as in upland habitats away from the valley bottom.

The USFWS (USFWS, 1989) determined that, in order to constitute acceptable black-footed ferret habitat, black-tailed prairie dog colonies or complexes of colonies (a prairie dog colony complex is defined as two or more neighboring colonies each less than seven km from the other) must be at least 80 acres in size. Further, colonies should contain 12 active burrows/ha (4.7 active burrows/acre) (Biggins et al., 1993).

Historically, prairie dog populations on non-Native American lands in the Tongue River valley have been controlled through poisoning and shooting. Consequently, colonies tend to be small and somewhat widely dispersed. Depending on landowner tolerance, both the number of colonies and the size of individual colonies (both areal size and the density of active burrows) may gradually increase before control measures are again applied.

On Native American lands (i.e., the Northern Cheyenne Indian Reservation), prairie dog control has been much less consistent or systematic. In the early 1990's, investigators identified a large black-tailed prairie dog complex along the east edge of the Reservation (GeoResearch, Inc., 1991). This complex encompassed about 10,000 acres of active prairie dog colonies (ICC, 1992). In 1994 many of these colonies were debilitated by sylvatic plague, reducing the size of the active complex. However, prairie dogs may reoccupy affected colonies (Steve Oddan, biologist, U.S. Fish and Wildlife Service, Billings, Montana, personal communication, December 1, 1994). Therefore, for the purposes of this Biological Assessment, potential black-footed ferret habitat was considered to be the entire 10,000 acre complex.

The USFWS expressed concern that prairie dog colonies on the east side of the Tongue River (non-Native American lands) might be part of this complex (ICC, 1992). Rivers might be seasonal barriers to black-footed ferret movement (Biggins et al., 1993), but considering the historical distribution of ferrets from Canada to Mexico (Hillman and Clark, 1980), it is improbable that streams the size of the Tongue River represent impassable barriers to ferret dispersal. If the Northern Cheyenne black-tailed prairie dog complex is redefined to include some of the colonies east of the river, however, the percentage of the complex east of the river would undoubtedly be very small (ICC, 1992). Nevertheless, TRRC would survey the final approved TRRC Extension route for the location and size of prairie dog colonies that might be affected by construction and operation of the rail line, and, if appropriate, survey applicable colonies for the presence of black-footed ferrets (ICC, 1992).

Peregrine falcon

Peregrine falcons could occur along the Tongue River as migrants (Palawski, 1989). There have been occasional sightings along the valley (ICC, 1992; USFWS, 1992). It is reasonable to assume that the north-south orientation of the valley, as well as the presence of a prey base (primarily medium-sized birds such as waterfowl, shorebirds, and rock doves) associated with the river, could attract falcons during migration.

However, there are no known peregrine falcon eyries along the river, including the segment of the river drainage potentially affected by the TRRC Extension (ICC, 1992). A survey of potential peregrine falcon nesting habitat along a portion of the Tongue River adjacent to the TRRC Extension route (Sumner, 1979) concluded that while the prey base was sufficient to support peregrine falcons, nesting habitat (cliffs) was only adequate. More suitable nesting habitat is widely available in Montana and until the peregrine falcon becomes more common, it appears unlikely that it would nest in this area (Dennis Flath, Nongame Coordinator, Montana Department of Fish, Wildlife and

Parks, pers. comm. quoted in USFWS, 1992). No suitable nesting cliffs would be disturbed by construction or operation of the TRRC Extension.

Bald eagle

Since the late 1970's, the bald eagle has substantially increased its nesting distribution and numbers. Consequently, in summer 1994 the USFWS released a proposed rule to downlist the bald eagle from endangered to threatened in 45 of the 48 contiguous United States, including Montana (Lori Nordstrom, biologist, Montana state office, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, personal communication, October 11, 1994). The USFWS has one year to review its proposal; therefore, the USFWS will announce in summer 1995 whether it has decided to downlist the bald eagle (Lori Nordstrom, biologist, Montana state office, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, personal communication, June 12, 1995).

Bald eagles occur along the Tongue River as migrants and winter residents. They forage on fish, waterfowl, carrion, etc. During migration as many as 50 bald eagles have been counted along the Tongue River from Miles City to the upper end of the Tongue River Reservoir (Farmer, 1992).

The value of the river immediately below the Tongue River Dam to attract migrant and wintering bald eagles has been recognized (e.g., Lockhart and McEneaney, 1978). It is estimated that an average 10-15 bald eagles winter along the river below the dam (USFWS, 1992).

In the mid-1980's, a pair of bald eagles exhibited pair-bonding activity near a nest (for the purposes of this Biological Assessment, this nest will be referred to as Nest 01) in a cottonwood tree along the Tongue River about 2.5 miles below the dam (Figure

1). No egg-laying occurred and in subsequent years this nest was used by golden eagles (USFWS, 1992).

In spring 1992 a pair of bald eagles established a nest (Nest 02, Figure 1) in a cottonwood tree about eight miles downstream from the dam (Harms, 1992). In the past few years Nests 01 and 02 were apparently used interchangeably by the same pair of bald eagles (Dennis Flath, Nongame Coordinator, Montana Department of Fish, Wildlife and Parks, personal communication, November 7, 1994). In spring 1994 Nest 01 was occupied by bald eagles but was destroyed in a windstorm; Nest 02 was not occupied. It was expected that there would be a good probability that these bald eagles would construct a new nest somewhere downstream from the dam, or would reoccupy Nest 02 (Dennis Flath, Nongame Coordinator, Montana Department of Fish, Wildlife and Parks, personal communication, November 7, 1994). It appears that this assumption was correct, as a great blue heron nest about two miles downstream from the dam was occupied in March 1995; this new nest will be referred to as Nest 03.

Another pair of bald eagles was observed in the vicinity of Nest 02 in March 1995. Nest 02 may have also been destroyed, as it could not be located in March 1995 (John Berry, biologist, Kiewit Mining Group, Sheridan, Wyoming, personal communication, May 1, 1995). This second bald eagle pair therefore apparently does not have a nest but may yet build one (Dennis Flath, Nongame Coordinator, Montana Department of Fish, Wildlife and Parks, personal communication, April 11, 1995).

Loss of bald eagle nests is not uncommon. In Montana, an average of seven percent (range 3-15 percent) of all bald eagle nests are lost each year; the continent-wide nest turnover rate is also seven percent (range 5-20 percent). Thus, while certain nests may remain active for many years, it is not unusual for the location of a nest site within a bald eagle nesting territory to change (Dennis Flath, Nongame Coordinator, personal communication, May 17, 1995).

In addition to the nests in the vicinity of the TRRC Extension, bald eagles have also successfully nested along the Tongue River upstream from the Tongue River Reservoir (Phillips et al., 1990) and downstream between Ashland and Miles City (ICC, 1992). Both these nests are also in cottonwood trees.

Bald eagles were analyzed in the DEIS for the Tongue River Dam rehabilitation project (Bureau of Reclamation et al., 1995). Using similar mitigation measures to those proposed in this Biological Assessment, this DEIS concluded that there would be no adverse effects to the bald eagle.

Pallid sturgeon

The pallid sturgeon lives exclusively in the Missouri River, the lower Yellowstone River, and the Mississippi River below its confluence with the Missouri River. Much of its historical range has been altered by human activities: 51 percent has been channelized, 28 percent impounded and 21 percent affected by upstream impoundments which alter flow and temperature regimes (Clancy, 1991).

Historically, the pallid sturgeon was present at the mouth of the Tongue River and in the nearby Yellowstone River. From 1950 to 1991, however, there were no documented records of pallid sturgeon above the Intake Diversion (USFWS, 1992). As part of the environmental studies for the Tongue River Dam Rehabilitation Project, the U.S. Bureau of Reclamation (USBR) contracted with MDFWP to survey the Yellowstone River from the Intake Dam to Cartersville Diversion Dam upstream from Miles City, which was considered to be a total block for pallid sturgeon migrating past the Intake Diversion. A single pallid sturgeon was captured in July, 1991, demonstrating that the pallid sturgeon has not been extirpated from the Yellowstone River above the Intake Diversion and may still reach the mouth of the Tongue River (USFWS, 1992).

Although the ecology of this fish is not well understood, it apparently requires large, turbid, free-flowing rivers with rocky or sandy streambeds. Pallid sturgeon often feed in turbid water because they capture prey by feeling vibrations and movements with their barbels. The pallid sturgeon spawns infrequently, apparently because of the comparatively low occurrence of appropriate spawning temperature and substrate conditions. The pallid sturgeon has only a two-week spawning "window" when the stream flow, day length and water temperature are suitable. Water must be highly oxygenated at a temperature of 68-70°F before the fish will spawn. In addition to appropriate water temperatures, the pallid sturgeon spawns where the current is swift, over a hard stream bottom (e.g., gravel, hard clay or rock), often where a tributary enters the main stream. The sturgeon deposits eggs at these sites, which then adhere to the bottom. Therefore, shifting bedloads and sediment may be extremely detrimental, even in otherwise turbid water.

Appropriate spawning habitat is available at the mouth of the Tongue River (USFWS, 1992). If spawning habitat for pallid sturgeon is considered to be identical to that of the closely related shovelnose sturgeon (the two species are known to hybridize), then it is possible that pallid sturgeon could extend 20 miles up the Tongue River (USFWS, 1992). However, this area is still far downstream from the TRRC Extension route.

METHODS

As discussed earlier, the information for this Biological Assessment was collected from late 1989 through June, 1995. Collection methods included: 1) review of existing literature; 2) contact with knowledgeable parties; and 3) field inventories for bald eagle nests.

There was comparatively little available literature (technical reports or other publications) regarding endangered or threatened species in or near the TRRC Extension route. Wildlife inventory reports from active or proposed coal mines along

the route were reviewed, as was the Fish and Wildlife Coordination Act Report for the Tongue River Dam Rehabilitation Project (USFWS, 1992). Much of this information was already summarized in the TRRC Extension DEIS (ICC, 1992). Updates to the 1992 information base were provided by review of correspondence between USFWS, ICC, MDFWP, HRA and other consultants, etc. In addition, the DEIS for the Tongue River Basin Project (i.e., the Tongue River Dam rehabilitation project) was released in June, 1995. All citations used in this Biological Assessment are included in LITERATURE CITED.

Contacts with knowledgeable parties ranged from HRA's discussions with landowners along the route in 1990 and 1992, to contacts with USFWS, MDFWP, MBEWG, mining company and consultant biologists at various dates from 1990 through early 1995. Some of these communications were cited in the TRRC DEIS (ICC, 1992). All personal communications cited in this Biological Assessment were included in the text.

Field inventories for wintering and nesting bald eagles along parts of the TRRC Extension route near operating or proposed coal mines have been conducted sporadically since the mid 1970's (e.g., Lockhart and McEneaney, 1978; annual wildlife monitoring reports from the Montco, Decker and Spring Creek mines; etc.). Information from these surveys was summarized in the TRRC Extension DEIS (ICC, 1992), and the Fish and Wildlife Coordination Act Report for the Tongue River Dam Rehabilitation Project (USFWS, 1992). Inventories specific to the TRRC Extension route were conducted in February and April, 1992. For each survey, the Tongue River valley from Miles City to the upper end of the Tongue River Reservoir was flown at low altitude and low air speed in a Piper SuperCub. All wintering, migrant or nesting eagles were counted, and deciduous forest along the river was searched for nests that could be potentially used by bald eagles (Farmer, 1992). Results were reported to MDFWP and USFWS. After 1992, monitoring of active bald eagle nests along the Tongue River has been conducted by MDFWP, BLM and coal mining companies (Dennis Flath, Nongame Coordinator, Montana Department of Fish, Wildlife and Parks,

personal communication, November 7, 1994). In addition, the Nest 03 vicinity was visited as part of the preparation of the Biological Assessment on April 21, 1995.

ANALYSIS OF EFFECTS; PROPOSED MITIGATION MEASURES

Black-footed ferret

The black-footed ferret is not known to occur in the vicinity of the TRRC Extension route. If no ferrets are present, construction and operation of the TRRC Extension would not affect this species. If ferrets are present, effects could include mortality (e.g., ferrets could be killed by equipment during construction or by trains during operation of the TRRC Extension) and displacement from disturbed habitat (due to fires, dust, noise, accidental fuel spills, etc.).

Since critical habitat for the black-footed ferret is prairie dog colonies, effects of construction and operation of the TRRC Extension on prairie dogs could potentially affect the black-footed ferret. The primary impact of the TRRC Extension would be the disturbance of existing black-tailed prairie dog colonies during construction of the rail line. Some prairie dogs might be killed by construction activities. Displacement of prairie dogs away from construction activity could also occur, but would be short-term because undisturbed burrows would likely be reoccupied shortly after human activity had ceased.

Other potential effects to prairie dogs would include mortality from trains, or effects from fires, dust, potential fuel spills, or other rail line accidents. Such effects would be short-term and would be limited to comparatively small areas and numbers of prairie dogs. They would not affect local or regional populations of prairie dogs.

It is not expected that landowner attitudes towards prairie dogs would change as a result of the construction and operation of the TRRC Extension. Thus, ranchers would be expected to periodically continue to control prairie dogs on their property.

Reasonably foreseeable related and unrelated actions and cumulative effects would include: 1) assuming construction of the already approved rail line from Miles City to Ashland, the development of 2-3 coal mines in the Ashland area could potentially affect other existing prairie dog colonies, as could construction of the rail line itself. These direct and indirect impacts would be similar to those for the TRRC Extension; 2) recreational hunting of prairie dogs might increase as an indirect effect of the increasing human population in the region. However, the intensity of recreational hunting would depend on private landowner permission and cooperation; and 3) the Tongue River Dam Rehabilitation Project and its proposed mitigation measures might affect two or more small prairie dog colonies (USFWS, 1992).

At present, the number, location and size of active prairie dog colonies that would be disturbed by the TRRC Extension have not be identified. However, TRRC will inventory the route during final engineering (ICC, 1992). The USFWS (Harms, 1992) has expressed concern that some prairie dog colonies that might be disturbed by the TRRC Extension on the east side of the Tongue River, could be part of a large prairie dog colony complex previously identified on the west side of the river. Consequently, this inventory will also be used to determine if colonies on the east side of the river are part of this larger complex (as measured by USFWS, 1989 criteria).

Following the inventory, but during the year prior to construction, all active prairie dog colonies that would be directly disturbed by construction of the TRRC Extension would be surveyed for the presence of black-footed ferrets. Colonies smaller than 80 acres would be qualitatively examined. Colonies larger than 80 acres would be surveyed using USFWS (1989) guidelines.

Active prairie dog colonies that would not be directly disturbed would not be surveyed because: 1) there are no recent records of the black-footed ferret in the vicinity of the TRRC Extension route; 2) on non-Native American lands, prairie dog colonies that would be directly affected by the rail line, as well as neighboring colonies, were historically controlled by landowners. This management policy resulted in generally small, somewhat isolated colonies that have not been consistently large enough (1,000 acres or greater) to support ferrets. Assuming no changes in landowner attitudes, it is unlikely that prairie dog complexes on non-Native American lands would develop to or remain stable at sufficient size to support a ferret population; and 3) even if prairie dog colonies on non-Native American lands east of the Tongue River (including colonies that would be directly affected by the TRRC Extension) were determined to be part of the large prairie dog complex on Native American lands west of the river (the Northern Cheyenne complex), these colonies have been under a management policy which discourages occupancy by black-footed ferrets. In contrast, the Northern Cheyenne complex is of sufficient size (10,000 acres) to support black-footed ferrets without the inclusion of colonies east of the river (ICC, 1992). Therefore it is reasonable to assume that disturbance of prairie dog colonies east of the river (marginal black-footed ferret habitat) by construction of the TRRC Extension, would not affect black-footed ferret use of the Northern Cheyenne prairie dog complex west of the river.

If black-footed ferrets are found in the prairie dog colonies to be directly affected by the TRRC Extension, TRRC would immediately notify the ICC and the USFWS. The three parties would confer to determine appropriate means to mitigate the effects of construction and operation of the TRRC Extension on the black-footed ferret.

Peregrine falcon

Since the peregrine falcon does not nest along the TRRC Extension route, and because nesting habitat along the route is only of moderate quality, construction and operation

of the TRRC Extension would not affect critical peregrine falcon nesting habitat. Migratory peregrine falcons would not be directly affected by construction and operation of the TRRC Extension, but could be indirectly affected if prey species such as waterfowl were temporarily displaced from the river by passing trains. However, this impact would be very short term and would not have a significant effect on either waterfowl or peregrine falcon use of the Tongue River valley.

Reasonably foreseeable related and unrelated actions and cumulative effects would include: 1) assuming construction of the already approved rail line from Miles City to Ashland, the development of 2-3 coal mines in the Ashland area would not affect peregrine falcons, since no nesting sites (cliffs) have been identified which would be disturbed (Sumner, 1979; ICC, 1992); 2) an increasing human population in the region could result in accidental mortalities or displacement of migratory peregrine falcons, but this impact would be expected to be minor; and 3) if the Tongue River Dam Rehabilitation Project affects flows in the Tongue River, it could affect use of the river by prey species such as waterfowl and shorebirds. Similarly, changes in the reservoir level beyond those normally occurring during present operation, could also affect prey availability. However, these changes would be short-term and would have no long-term effects on migratory peregrine falcons.

Because the peregrine falcon would experience no significant adverse impacts as a result of the construction and operation of the TRRC Extension, no mitigating measures are proposed.

Bald eagle

The Montana Bald Eagle Management Plan (MBEWG, 1994) summarized the reaction of bald eagles to human activities as:

Bald eagles are sensitive to a variety of recreational, research, resource and urban development activities. Responses of eagles may vary from ephemeral, temporal and spatial avoidance of activity to total reproductive failure and abandonment of breeding areas. Less adequately documented is that bald eagles also tolerate apparently significant disturbances. Relationships of human activity and eagle responses are highly complex, difficult to quantify, and often site-specific. Responses vary depending on type, intensity, duration, timing, predictability and location of human activity. The way in which these variables interact depends on age, gender, physiological condition, sensitivity, residency and mated status of affected eagles. Prey base, season, weather, geographic area, topography and vegetation in the vicinity of activities and eagles (plus other variables probably unperceived by humans) also influence eagle responses. Cumulative effects of many seemingly insignificant or sequential activities may result in disruption of normal behavior. Lack of experimental data (due to endangered/threatened status) limits quantification of response to empirical evidence, but general trends in eagle responses (or lack thereof) to human activity are becoming evident to field researchers and managers, although somewhat subjectively. Clearly, some bald eagles are more tolerant of human activity than others. Tolerance threshold is usually site, pair, and activity specific and a function of type, intensity, and proximity of disturbance over exposure time. However, it is becoming apparent that there are "urban" and "rural" eagles. Urban eagles may be more tolerant of certain human activities than their rural counterparts because they have been or are exposed to more human activity at gradually increasing levels while rural eagles' exposure is abrupt.

The Montana Bald Eagle Management Plan (MBEWG 1994) defined disturbance, as used above, to be "any human elicited response that induces a behavioral or physiological change in a bald eagle contradictory to those that facilitate survival and reproduction. Disturbance may include elevated heart or respiratory rate, flushing from a perch or events that cause a bald eagle to avoid an area or nest site."

Based on the above descriptions, it is reasonable to assume that bald eagles nesting along the Tongue River in the vicinity of the TRRC Extension would be accustomed to some level of disturbance related to use of the county road (which passes within 800 feet of Nest 01 (Figure 2), within 200 feet of Nest 03 (Figures 3 and 5), and within 1/2-mile of Nest 02 (Figure 4)), residences, agricultural activities such as hay production and feeding livestock, and limited recreational use of the Tongue River.

Construction

In compliance with applicable Federal statutes, no known bald eagle nests would be destroyed by construction of the TRRC Extension. Construction of the rail line would disturb only about one acre of deciduous tree/shrub habitat (ICC, 1992). Therefore the impact to potential nesting or roosting habitat would be insignificant.

The greatest potential impact of construction of the TRRC Extension near an active bald eagle nest during the nesting season could be increased stress to the pair (included within the definition of "disturbance"), which could result in nest abandonment or failure. Construction activities might also displace certain kinds of prey, such as waterfowl and other birds, along the route; such displacement would be localized and short-term. Other types of prey, including fish, would not be significantly affected.

The TRRC Extension would pass within about 3/4-mile of Nest 01, 1/4-mile of Nest 03 and about 1/2-mile of Nest 02 (Figures 2-4). As discussed earlier, Nest 01 was destroyed by a windstorm in 1994, and Nest 02 was probably destroyed. Since bald eagles usually rebuild destroyed nests, often in the same or a nearby stand of trees, the Montana Bald Eagle Management Plan (MBEWG, 1994) requires that such sites be considered occupied for five years after the last recorded activity of breeding bald eagles.

Construction of the TRRC Extension could displace migrant or non-nesting bald eagles from portions of the Tongue River valley, and also displace certain types of prey. This effect would be short-term and would occur only during the construction season (probably April through October). Therefore wintering bald eagles would not be affected by construction of the TRRC Extension.

Fig. 2. Bald eagle management zones in relation to the TRRC Extension route, bald eagle nest 01.

Fig. 3. Bald eagle management zones in relation to the TRRC Extension route, bald eagle Nest 03.

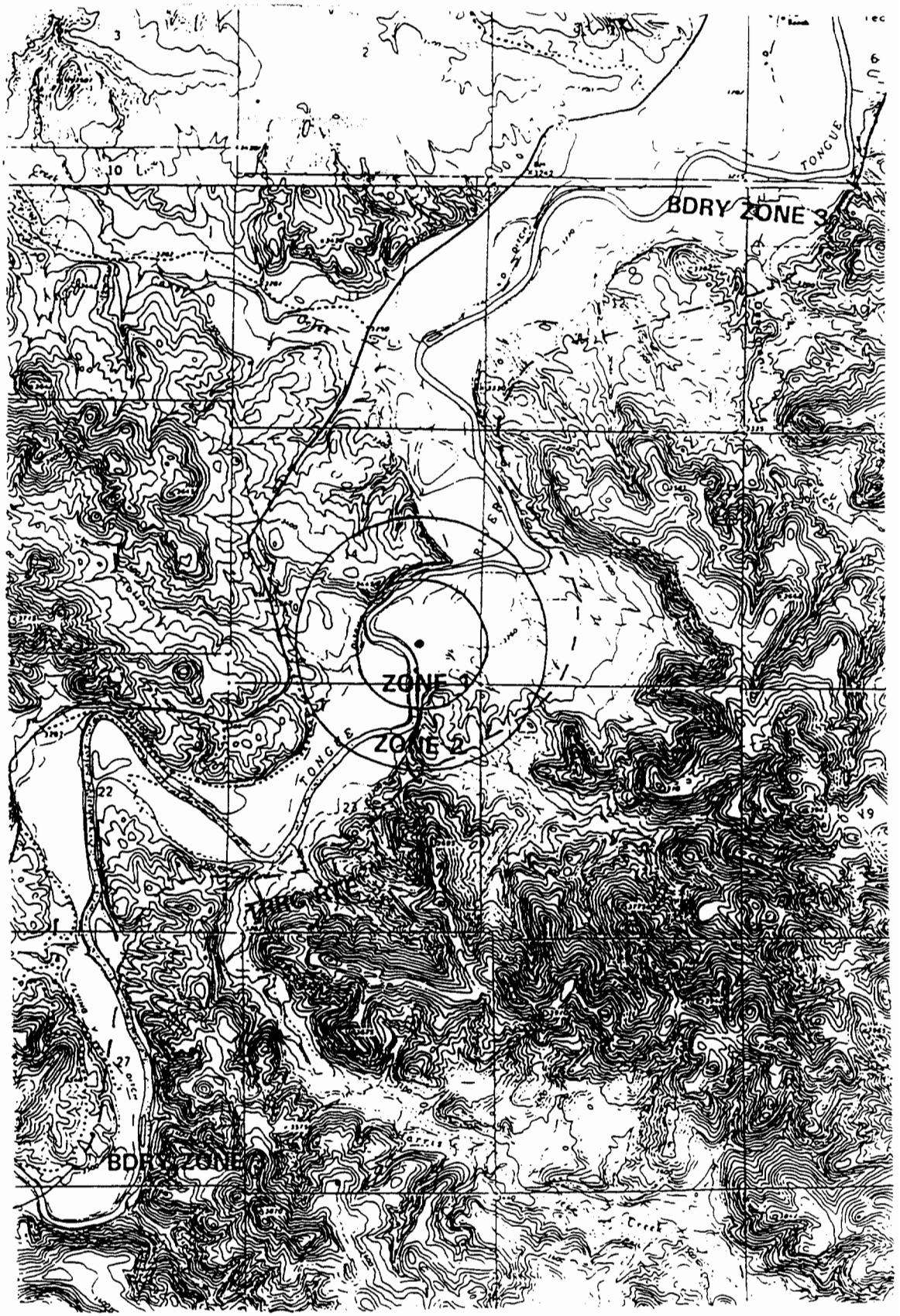

Fig. 4. Bald eagle management zones in relation to the TRRC Extension route, bald eagle Nest 02.

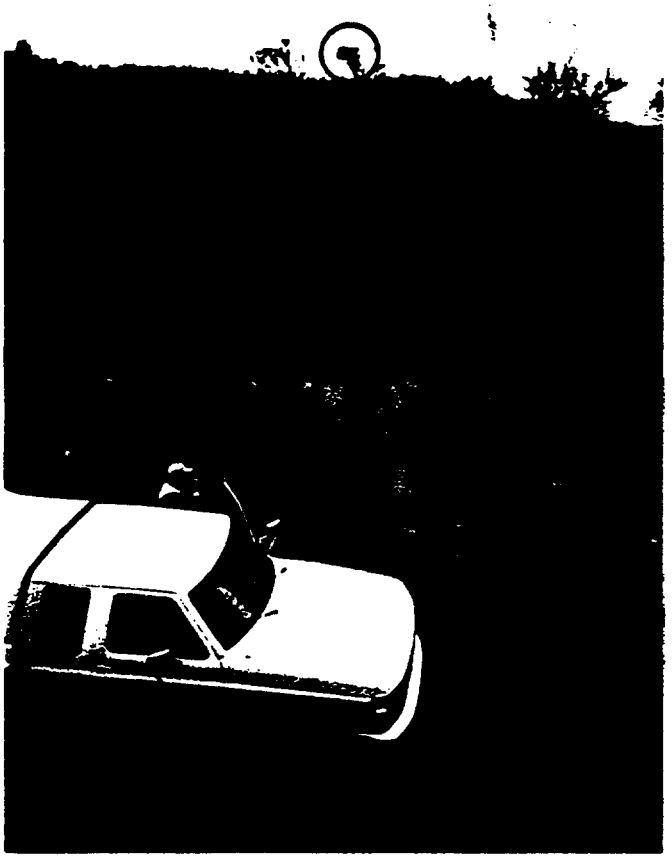

Fig. 5. Bald eagle Nest 03 from county road, April, 1995.

Fig. 6. Approximate route of TRRC Extension in relation to Nest 03.

Indirect effects from construction would be related to the presence of the construction force, and would potentially include: 1) displacement as a result of increased recreation (e.g., fishing, hunting, hiking, camping, wildlife observation) in the river valley. At present, recreational access to the valley is restricted by private landowners. This situation is not expected to change as a result of the construction and operation of the TRRC Extension; 2) mortalities of bald eagles from vehicles along access roads to the TRRC Extension route, particularly if bald eagles were attracted to these roads by the presence of carrion such as vehicle-killed deer (USFWS, 1986); and 3) an increased potential for illegal killing of bald eagles as a result of increased numbers of people in the area.

Operation

Nest 01 was within 1/4-mile of a county road and within 1/2-mile of an occupied residence, and was adjacent to active ranching activities such as cattle grazing and hay production. Nest 03 is within 200 feet of a county road (Figures 5 and 6) and within 1/2-mile of an occupied residence, and is also adjacent to active ranching activities. Nest 02 was also within 1/2-mile of a county road and was adjacent to active ranching activities. Therefore the bald eagles that use these nest sites (it is believed the pair from Nest 01 occupied Nest 03; John Berry, biologist, Kiewit Mining Group, Sheridan, Wyoming, personal communication, April 20, 1995) are habituated to some level of human activity near their nests, even during the peak of nesting season. It is reasonable to assume they will remain habituated to some level of human activity.

Rail line maintenance activities near active bald eagle nests could result in short-term displacement of eagles. The magnitude of this impact is impossible to predict because: 1) whether or not a maintenance activity would be required near an active eagle nest during the nesting season is not predictable; and 2) the kind of maintenance activity could influence the magnitude of the effect. For example, extensive

replacement of rails could have more effect than a normal rail inspection, since more workers and equipment would be needed for a longer time in the vicinity of the nest.

According to the Montana Bald Eagle Management Plan (MBEWG, 1994), the presence and abundance of food usually associated with open water, availability and distribution of foraging perches, availability of secure night roost sites and freedom from human harassment dictate the amount and extent of bald eagle use of specific wintering grounds. As discussed earlier, displacement of prey by train operation or rail line maintenance activities would be localized and short-term. According to the Montana Bald Eagle Management Plan (MBEWG, 1994) "...roost sites are usually located in stands of mature or oldgrowth conifers or cottonwoods. For purposes of management, a communal roost is defined as an area usually less than 10 acres in size that contains $\geq$ 6 bald eagles on any given night..." Since only about one acre of deciduous tree/shrub habitat would be disturbed by construction of the TRRC Extension (ICC, 1992), it is unlikely that such a roost would be affected. Therefore the greatest potential impacts to wintering bald eagles would be disturbance and/or mortality (by trains) of eagles feeding on carcasses of train-killed deer or other animals (USFWS, 1986).

According to the Montana Bald Eagle Management Plan (MBEWG, 1994), risks to migrant bald eagles mostly involve: 1) exposure to lead poisoning; 2) secondary poisoning from insect and predator control programs; 3) collisions and electrocutions associated with power transmission; and 4) loss of perching, foraging and roosting opportunities due to human disturbance. The first three impacts are not applicable to the TRRC Extension, and (as discussed earlier) the fourth would be limited and short-term.

Individual bald eagles exhibit different behavioral reactions to disturbances (MBEWG, 1994). Some may be extremely tolerant, while others may be intolerant of disturbance. "Tolerant" migrant or wintering bald eagles would not be significantly

affected by operation of the TRRC Extension. Maintenance activities during winter might result in short-term displacement of less tolerant individuals, but this effect would be localized and would not extend to the entire route.

Related and unrelated actions, and cumulative effects

Reasonably foreseeable related and unrelated actions, and cumulative effects would include: 1) assuming construction of the already approved rail line from Miles City to Ashland, other bald eagle nests along the Tongue River could experience effects similar to those of the TRRC Extension. As noted earlier, there is only one known bald eagle nest in the vicinity of this route; 2) development of 2-3 coal mines in the Ashland area would not affect bald eagles, since no nesting sites have been identified which would be disturbed; 3) an increasing human population in the region could result in displacement, accidental mortalities, or increased illegal killing of bald eagles; and 4) if the Tongue River Dam Rehabilitation Project interrupts flows in the Tongue River or radically changes water levels in the Tongue River Reservoir, it could affect use of these waters by prey species such as waterfowl and shorebirds.

Mitigation during construction

The Montana Bald Eagle Management Plan (MBEWG, 1994) defined Nest Site Management Zones for human activity in the vicinity of bald eagle nests. Detailed descriptions of Management Zones, and guidelines for human activity within them, are given in Appendix II. For the purposes of this Biological Assessment, Management Zone 1 includes the area within 1/4-mile of the nest site. The TRRC Extension route does not intrude in Management Zone 1 for either Nest 01 or 02 (Figures 2 and 4), but does intrude in Management Zone 1 for Nest 03 (Figure 3).

According to the guidelines for human activity within Management Zone 1, once an active nest has been located, Management Zone 1 "applies only to the active nest"

(Appendix II). If it is assumed that Nests 01 and 03 have been occupied by the same pair of bald eagles (John Berry, biologist, Kiewit Mining Group, Sheridan, Wyoming, personal communication, April 20, 1995), then there no longer is a Management Zone I around Nest 01.

For the purposes of this Biological Assessment, Management Zone 2 is considered the primary use area for nesting bald eagles and comprises the area between Zone 1 (1/4-mile from the nest site) and 1/2-mile from the nest site. The TRRC Extension route does not intrude in Management Zone 2 for Nest 01 (Figure 2), but does intrude in Management Zone 2 for Nests 03 and 02 (Figures 3 and 4, respectively). However, as with Management Zone 1, once an active nest has been located, Management Zone 2 applies only to the active nest (Appendix II). Therefore there is no Management Zone 2 for Nest 01.

Management Zone 3 represents most of a home range used by bald eagles during a nesting season, and extends to a radius of 2.5 miles from the nest site. Zone 3 overlaps about 5.1 miles of the TRRC Extension route near Nest 01, about 4.5 miles of the route near Nest 03, and about 6.1 miles of the route near Nest 02 (Figures 2, 3 and 4, respectively).

The Nest 03 vicinity was visited on April 21, 1995. The nest is located in a cottonwood tree whose base is approximately 3340 feet in elevation, as estimated from USGS 7-1/2 minute topographic maps. The nest was estimated to be about 70 feet above the ground, or approximately 3410 feet in elevation. A series of photos and map notes were made from the county road in Management Zones 1, 2 and 3; these, in turn, were used to estimate the limits of observability from the nest itself. It was estimated that a bald eagle in Nest 03 would be able to see approximately 600 feet of the TRRC Extension route through Management Zone 1, 1320 feet of the route through Management Zone 2, and 4600-8800 feet (depending on the final configuration of the route, as well as the true visibility from the nest) of the route

through Management Zone 3 (Figure 6). Due to the position of the nest near a bluff, none of the route north or northwest of the nest would be visible from the nest. However, adult bald eagles soaring above the nest, defending their territory, would be able to see the rail line for several miles in either direction.

The bald eagle nesting period (encompassing courtship, nest building, egg laying, incubation, hatching and rearing young, and fledging) extends from February 1-August 15 (MBEWG, 1994). Therefore the TRRC Extension construction period would overlap the bald eagle nesting period. To mitigate effects of construction on nesting bald eagles, the following monitoring plan would be instituted:

- In the year prior to construction of the TRRC Extension, TRRC will survey the Tongue River valley along the Extension route for the presence of nesting bald eagles. Any active or inactive bald eagle nests will be reported immediately to the USFWS and MBEWG. Assuming access to a nest site is available, the ground below active nests will be surveyed during the post fledging period for evidence revealing the food habits of the eagles at this site. Such information might be useful in defining the threshold limits discussed below.

- A program to monitor each active nest will be developed through on-site consultation with the USFWS and/or MBEWG. The primary objective of monitoring would be to determine if approaching construction activities have a negative effect on nesting bald eagles. USFWS and/or MBEWG consultation would be expected to define, on a nest-by-nest basis, the kind and amount of overt disturbance behavior exhibited by nesting bald eagles that would indicate that construction activities should be halted (henceforth called "threshold behavior"). It is expected that parameters influencing the determination of threshold behavior would include, but not be limited to, location of the nest in relation to the TRRC Extension route, distance from other human disturbances such as the county road, and known history of the nesting birds. It is expected that the threshold behavior value would vary, depending on the time of the nesting period (e.g., egg laying vs. rearing).

- Persons assigned to monitor active bald eagle nests (henceforth called "environmental inspectors") would have the authority to immediately halt TRRC Extension construction activities in the vicinity of an active nest when the threshold behavior is exhibited by the nesting birds. This

authority would be granted as part of contract specifications between TRRC and the construction contractor. The environmental inspector would notify the on-site construction supervisor that construction activities must cease. The on-site construction supervisor would be responsible for notifying construction crews to cease activities in the vicinity of the nest.

- In the event of a construction halt, the environmental inspector would notify USFWS and/or MBEWG. USFWS and/or MBEWG would evaluate the situation and make a recommendation to halt construction activities until a later date, proceed with certain kinds of activities, etc.

Within the framework of the above monitoring plan, the following TRRC Extension construction activities could occur:

- There would be no construction activities within Management Zones 1 and 2 at any active bald eagle nest during the nesting period (February 1 - August 15, or until five days after the first observation of independent flight).

- Low intensity activities, such as surveying, could occur in Management Zone 3 beyond line of sight of any active nest from February 1 to May 1 (i.e., courtship through initiation of hatching). High intensity activities (heavy equipment operation, grading, etc.) would not occur in Management Zone 3 around any active nest during this period.

- Once monitoring confirms that hatching has occurred (any time after May 1), low intensity activities could occur anywhere within Zone 3 of any active nest. High intensity activities would be confined to those portions of Management Zone 3 beyond line of sight of an active nest.

- Once monitoring confirms that fledging has occurred (i.e., five days following the first observation of independent flight), high intensity activities could occur anywhere within Management Zones 1, 2 and 3.

It is anticipated this monitoring effort would extend until five days following the first observation of independent flight by the fledglings. At that time, monitoring would end. Thus, monitoring would extend at least through June 15, and usually no later than August 15.

Mitigation during operation

The following measures would be implemented during operation of the TRRC Extension:

- Rail line maintenance activities would fall into two general categories. The first would be comprised of non-emergency or planned activities, and would not take place in Management Zones 1 or 2 from February 1 through May 15. After May 15 until the first observation of independent flight of the fledglings (usually no later than August 15), these activities could occur in the afternoons. By afternoon, adult eagles have usually completed feeding the chicks and there would be minimal disruption of this activity.

  Certain planned maintenance activities, such as routine inspections of the rail line, would necessarily have to occur during the February 1 - May 15 period. However, these activities would be expected to be short-term and low intensity, and would be anticipated to have minimal effects to bald eagles.

  The second category of maintenance activity would be emergency maintenance or repairs. Such activities cannot be foreseen and therefore cannot be planned to occur in periods that would minimize the effect to nesting bald eagles. The degree of effect to nesting bald eagles would be influenced by the magnitude of the activity, the time of the nesting season at which the activity occurs, and the tolerance for disturbance displayed of the affected bald eagles. TRRC would notify USFWS as soon as reasonably possible of an emergency maintenance activity within Management Zones 1 or 2 around an active bald eagle nest.

- In consultation with the MBEWG, TRRC could identify one or more tracts of land along the Tongue River for purchase for management as potential bald eagle nesting habitat. Criteria that could be used to select such tracts would include but not be limited to: 1) location near irrigation

dams, natural riffle/run sequences, etc. that would concentrate prey (fish), particularly in reaches of the river where naturally occurring turbidity might otherwise limit observability of fish; 2) location in areas that would be "cut off" by construction of the railroad. This would have two advantages: a) landowners who would otherwise have difficulty accessing these sites for agricultural management due to the railroad, might be receptive to selling such sites for wildlife management purposes; and b) isolating such sites with the railroad grade from other human disturbances might improve their attractiveness for less tolerant bald eagle pairs; and 3) presence of appropriately sized and aged stands of cottonwoods that would be available, or would have the potential to eventually develop as nest sites for bald eagles. Montana Riparian-Wetland Association criteria (Hansen et al., 1995), or other appropriate methodology, would be used to inventory these sites.

Once a tract has been purchased, it could be managed as potential bald eagle nesting habitat by measures such as: 1) the site could be fenced to exclude livestock, which would aid regeneration of cottonwoods and understory species; and 2) through consultation with the MBEWG and/or groups such as the Montana Riparian-Wetland Association, more intensive management steps such as planting cottonwoods, could be undertaken if necessary to enhance the site as future nesting habitat.

- TRRC employees engaged in routine inspection of the rail line (a minimum of two times per week) would remove train-killed deer or other large animals from the right-of-way, in order to protect migrant of wintering bald eagles feeding on such carrion, from mortalities by trains. Carrion would either be completely removed from the vicinity of the rail line, or would be placed at locations along or near the right-of-way where there would be no potential for mortalities from trains, per objective 1.3123 of the Pacific Bald Eagle Recovery Plan (USFWS, 1986).

- TRRC would prohibit trapping within its ROW. This measure would ensure that bald eagles are not accidentally caught in traps set for other animals.

Pallid sturgeon

Since the pallid sturgeon is not known to occur, nor is appropriate spawning habitat available, in the reach of the Tongue River potentially affected by construction and operation of the TRRC Extension, there should be no direct effect to this species.

Indirect effects of construction and operation of the TRRC Extension could include additional sediment loads at rail line stream crossings during construction. This effect will be insignificant compared to normal sediment loads in the Tongue River, particularly since potential occupied pallid sturgeon habitat is far downstream from the TRRC Extension. Effects such as accidental fuel spills into the Tongue River, could affect water quality and influence spawning success of pallid sturgeon in the lower Tongue River and Yellowstone River. However, these impacts would be likely be controlled by TRRC's spill control efforts, prior to their intrusion into pallid sturgeon spawning habitat.

Reasonably foreseeable related and unrelated actions, and cumulative effects would include: 1) assuming construction of the already approved rail line from Miles City to Ashland, pallid sturgeon spawning habitat in the lower Tongue River could experience effects from construction and operation of this rail line. For the most part, however, this rail line would be located at a sufficient distance from the river to minimize these impacts; 2) development of 2-3 coal mines in the Ashland area would not affect pallid sturgeon, since they do not spawn in this vicinity and all proposed mines would not directly affect the Tongue River; 3) an increasing human population in the region could result in additional captures of pallid sturgeon by recreational fishermen, particularly near the mouth of the Tongue River. An appropriate information/education campaign employed at public fishing accesses would minimize this loss; and 4) if the Tongue River Dam Rehabilitation Project interrupts flows in the Tongue River, it could affect pallid sturgeon spawning in the lower Tongue River or the Yellowstone River near the confluence of the Tongue River. Since this effect would be relatively short-term, there

would be no permanent or long-term effect to pallid sturgeon use or spawning of these river reaches.

DETERMINATION OF EFFECT

Based on the above information and proposed mitigation measures, this Biological Assessment concludes that:

- Construction and operation of the TRRC Extension is not likely to adversely affect the pallid sturgeon.
- Construction and operation of the TRRC Extension is not likely to adversely affect the peregrine falcon.
- Construction and operation of the TRRC Extension, if the proposed mitigation measures are applied, is not likely to adversely affect the black-footed ferret.
- Construction and operation of the TRRC Extension, if the proposed mitigation measures are applied, is not likely to adversely affect the bald eagle.

If mitigation measures are employed as proposed, construction and operation of the TRRC Extension will have no short-term or long-term effect on any of the listed species discussed above.

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Appendix I. Letter from Dennis Flath, Nongame Coordinator, Montana Department of Fish, Wildlife and Parks, May 17, 1995.

Montana Department of Fish, Wildlife & Parks

FWP Bldg., MSU Campus
Bozeman, MT 59717-0322

May 17, 1995

Patrick Farmer
WESTECH
P.O. Box 6045
3005 Airport Road
Helena, MT 59604

Dear Pat,

Thanks for the opportunity to review the draft Biological Assessment for the Tongue River Railroad Extension. Hopefully my comments will be useful in preparation of the final.

p.2, last para.: This paragraph clears up a point which had been rather confusing to me. It's an important point that should be retained.

Where you quote me, refer to me as: Nongame Coordinator.

The nest site you describe as 01-A should be numbered as -03 to be consistent with the MBEWG system of numbering. Thus, the full number becomes 041-005-03 (management zone-territory number-nest number). That's how it will be identified in production memos & etc.

Nest turnover should be recognized, perhaps on p. 13. In Montana we lose an average of 7% (range 3-15%) of our nests each year that have to be rebuilt. The continent-wide average is also about 7% (range 5-20%). Thus, the actual location of a nest site within a territory is somewhat fluid over time, and you should anticipate these eagles may move again in the future. Nest longevity in Montana has ranged from 1-48 years. Nest tree selection by bald eagles focuses on big, old trees, thus they tend to select trees with the shortest remaining life expectancy. In planning for the future we need to be concerned with an ongoing supply of suitable nest trees.

p. 21: "No known bald eagle nests would be destroyed by construction..." makes it sound like an option. It isn't, due to the Bald Eagle Protection Act of 1940 and other protective laws.

Also on p. 21, 3rd para., the sentence "Since there is a possibility that bald eagles will rebuild..." would be more appropriate expressed as: Bald eagles usually rebuild destroyed

nests, often selecting another tree in the same stand or a nearby stand. This better reflects our experience with the species.

There are a few references to prey species in the document. We know generally what the food habits of bald eagles are, but we also know there is substantial variation between pairs. I think it would be worthwhile to search for prey remains beneath the nest (post fledging) to at least get some idea of what they are using. You might not learn very much, but on the other hand you might discover something which provides additional insight to the behavior of this particular pair. I think it would be a couple of hours well spent.

p. 27, top: Carrion (dead deer) should be moved off the right-of-way as per objective 1.3123 in the Pacific Recovery Plan. I have enclosed p. 47 from the Plan as well as the literature citation. I think it is a good move to cite the Recovery Plan. Also, the potential for illegal killing is an enforcement issue, and you may wish to mention that continued development of the area may require additional law enforcement. And, probably not just for eagles!

p. 27, 2nd para.: We assume that nesting bald eagles are willing to accept whatever was present in the area at the time they selected it. Thus, their habituation to existing activity is a correct assumption. Again, bear in mind that the nest may move.

p. 27, 3rd para.: I would suggest defining two categories of rail line maintenance: 1) emergency, and 2) non-emergency or "planned". Emergency maintenance/repairs will cause disturbance which, though unavoidable, should be recognized in advance to avoid misunderstanding when it occurs with little or no prior notice. Planned maintenance should not take place in Zones I & II prior to May 15 (incubation, light downies), then in the afternoons when young are dark downies or older. This allows them to get fed up during the morning feeding bout before the maintenance activity begins.

p. 28, end of first para. again cite Recovery Plan.

p. 30, 3rd para.: The limits of observability from the nest is valid for incubation, brooding, feeding and perching. However, these are big birds that spend a lot of time in the air. The defended area around a nest extends to about 0.5 or 0.6 mile radius from the nest <u>over</u> the canopy, and roughly 300 vertical feet above the nest, tapering down to the edges forming a "mushroom shaped" defended territory. The "stem" is the 0.25 mile radius on the ground. As mammals, <u>we</u> tend to look at everything from the ground, but eagles are not mammals. Visual screening is both useful and important, but the eagles will be very much aware that the balance of the route exists. During nestling stages, an adult often spends time soaring around and around over the nest (at the "top of the mushroom") guarding their territory. With their acute visual resolution, they <u>will</u> <u>see</u> <u>everything</u> going on for a considerable distance. We are fooling ourselves if we think we can fool them.

p. 31: Again, I think a quick search for prey remains beneath the nest tree would be a good idea. Either corroborate what we already suspect, or discover something new - or at least interesting.

p. 32, first bullet: instead of using fledging as a criteria, I would be more comfortable with 5 days following observation of independent flight. This gives the young a chance to get over some of their initial clumsiness.

p. 32, bottom: I'm pretty cool toward the idea of building the berm for visual screening. Quite frankly, I don't see much advantage to it from the eagles perspective. Only a few wing beats will give the eagles a view of whats behind the berm. Furthermore, when on the nest, the eagles may be apprehensive of noise from a source that they can't see or associate the noise with (this is conjectural on my part). Without a more convincing argument, I would prefer to see the funds for the berm dedicated to off-site mitigation as presented on p. 33.

p. 33: I really like this idea. If it comes to pass, please stay in touch because I would like to be involved.

p.34: Trapping issue: Its not the traps themselves that are the greatest risk, but the manner of making the set. Use of exposed baits is very hazardous to eagles (and other non-target species) and should be avoided. A prohibition on trapping in the ROW would certainly solve the problem, but more responsibility on the part of the trappers would be another approach.

The Montana Bald Eagle Management Plan is cited:

Montana Bald Eagle Working Group [MBEWG]. 1994. Montana Bald Eagle Management Plan. USDI, Bur. Rec., Billings, MT. 104pp.

Please pardon my lack of polish to this letter and the random sequence of topics. Overall I think you have a pretty good document going.

Sincerely,

Dennis L. Flath
Nongame Coordinator, and
Chair, Montana Bald Eagle
Working Group

encl.

c: Oddan
Hinckley
Hazlewood

THIS IS THE COMPLETED PACIFIC BALD EAGLE RECOVERY PLAN. IT HAS BEEN APPROVED BY THE U.S. FISH AND WILDLIFE SERVICE. IT DOES NOT NECESSARILY REPRESENT OFFICIAL POSITIONS OF COOPERATING AGENCIES, AND IT DOES NOT NECESSARILY REPRESENT THE VIEWS OF ALL INDIVIDUALS INVOLVED IN THE PLAN FORMULATION. THIS PLAN IS SUBJECT TO MODIFICATION AS DICTATED BY NEW FINDINGS AND CHANGES IN SPECIES STATUS AND COMPLETION OF TASKS DESCRIBED IN THE PLAN. GOALS AND OBJECTIVES WILL BE ATTAINED AND FUNDS EXPENDED CONTINGENT UPON APPROPRIATIONS, PRIORITIES, AND OTHER BUDGETARY CONSTRAINTS.

LITERATURE CITATION SHOULD READ AS FOLLOWS:

U.S. Fish and Wildlife Service, 1986. Recovery Plan for the Pacific Bald Eagle. U.S. Fish and Wildlife Service, Portland, Oregon. 160 pp.

Additional copies may be obtained from:

Fish and Wildlife Reference Service
Informatics General Corporation
6011 Executive Boulevard
Rockville, Maryland 20852
Telephone: 1-800-582-3421
(301) 770-3000

1.3121 MAINTAIN AND ENHANCE WETLAND AREAS FOR WATERFOWL PRODUCTION

Waterfowl comprise a significant portion of the eagle diet throughout the west; their reproduction must be maintained at eagle breeding areas in the Pacific recovery area as well as further north. Waterfowl produced in Canada are important to wintering eagle populations in the Pacific recovery area.

1.3122 ENHANCE WATERFOWL HABITAT ON BALD EAGLE WINTERING AREAS

Because of their importance both as a primary and secondary eagle food source, waterfowl populations should be encouraged to use areas of open water where bald eagles winter. A small population of waterfowl can support many wintering eagles. Waterfowl habitat management can include water level management and establishment of food plots, such as fields of unharvested corn.

1.3123 LEAVE AVIAN AND MAMMALIAN CARCASSES ON SITES FOR FUTURE USE BY EAGLES

Dead birds and mammals provide important food for eagles in the winter and early spring. Livestock and game carcasses should be removed from eagle use areas only if contaminants or disease agents are present, human health is endangered, or the location of the carcasses (e.g. on roads or railroad tracks) could cause eagle injuries or mortalities. In emergency weather situations, it may be desirable to deposit carcasses at eagle use areas. State conservation officers should develop plans for distributing road-killed game during emergency situations.

Appendix II. Description of bald eagle nest site management zones (MBEWG, 1994).

Zone 1 - Nest Site Area

Zone 1 includes the area in which human activity or development may stimulate abandonment of the breeding area, affect successful completion of the nesting cycle or reduce productivity, either annually or long-term. It includes the area within a 1/4 mile (440 m) radius of all nest sites in the breeding area that have been active within 5 years or until an active nest is located. Then, Zone 1 applies only to the active nest.

Objectives:

1. Eliminate disturbance.

2. Maintain or enhance nest site habitat suitability.

Guidelines:

1. Existing levels of human activities can continue if the breeding area has at least a 60% nest success, has fledged at least 3 young during the preceding 5 years, and has a low potential hazard rating on the Bald Eagle Nest Survey Form. Low intensity activities such as dispersed recreation can occur, but high intensity activities such as heavy equipment use, blasting, logging, or concentrated recreation should not occur during the nesting season. High intensity activity can occur during the non-nesting season if designed to minimize potential disturbance and avoid conflicts with bald eagle key use areas.

2. Additional human activity should not occur within Zone 1 from initiation of nest site selection to one month after hatching, unless the activity is consistent with bald eagle conservation. A short duration (less than one hour), nonrecurring, nonmotorized activity may occur during the late nestling to 2 weeks post fledgling period if the activity is under direct supervision of eagle specialists. Low intensity human activities such as dispersed recreation can occur during the non-nesting period or when the breeding area is not occupied.

2. Permanent development should be prohibited within Zone 1 of all nests (including alternates). Habitat alteration which may negatively affect the suitability of the breeding area for bald eagles should also be avoided. Such activities include, but are not limited to, timber harvest, prescribed fire, powerline construction, pesticide use, land clearing, stream channeling, levee or dam construction or wetland drainage.

4. If conflicts persist, subsequent levels of planning should ensue.

Zone 2 - Primary Use Area

Zone 2 includes the area 1/4 mile (400 m) to 1/2 mile (800 m) from all nest sites in the breeding area that have been active within 5 years or until an active nest is located. Then, Zone 2 applies only to the active nest. The Working Group assumes that 75% of activity (foraging, loafing, bathing, etc.) of a breeding pair occurs within the boundary of Zone 2 (including Zone 1).

Objectives:

1. Minimize disturbance.

2. Maintain the integrity of the breeding area.

2. Eliminate hazards.

Guidelines:

1. Low intensity activities such as dispersed recreation can occur, but high intensity activities such as heavy equipment use, blasting, or concentrated recreation use should not occur during the nesting season. Higher intensity activities can occur during the non-nesting season if designed to minimize potential disturbance and avoid conflicts with bald eagle high use areas.

2. Habitat alterations should be designed and regulated to ensure that preferred nesting and feeding habitat characteristics are maintained.

3. Permanent developments that may increase human activity levels during the nesting season should not be constructed within Zone 2 of all nests (including alternates). If conflicts persist, subsequent levels of planning should ensue.

4. Structures that pose a hazard such as overhead utility lines should not be constructed within Zone 2 of all nests (including alternates). Existing structures that pose risks of injury or death should be removed or modified.

5. Permanent developments should not be constructed.

5. If conflicts persist, subsequent levels of planning should ensue.

Zone 3 - Home Range

Zone 3 represents most of a home range used by eagles during the nesting season. It usually includes all suitable foraging habitat within 2.5 mi (4 km) of all nest sites in the breeding area that have been active within 5 years.

Objectives:

1. Maintain suitability of foraging habitat.

2. Minimize disturbance within key areas.

3. Minimize hazards.

4. Maintain integrity of the breeding area.

Guidelines:

1. Human activities, including permanent developments, should be designed and regulated to minimize disturbance and avoid conflicts with bald eagle key use areas.

2. Human activity should not reach a level where cumulative effects decrease habitat suitability.

3. Habitat alteration should be designed to ensure that prey base and important habitat components, such as perch trees or screening vegetation, are maintained or enhanced.

4. Pesticides should not be used in a manner which pose a hazard to bald eagles.

5. Structures which pose a hazard should be located and designed to minimize or avoid risk to bald eagles or their prey.

6. If conflicts persist, subsequent levels of planning should ensue.

United States Department of the Interior

FISH AND WILDLIFE SERVICE
ECOLGICAL SERVICES
100 N PARK, SUITE 320
HELENA MT 59601

November 22, 1995

M.24-ICC Tongue River RR

Ms. Elaine K. Kaiser
Chief, Section of Environmental Analysis
Interstate Commerce Commission
Washington, DC 20423

Dear Ms. Kaiser:

This letter transmits the Fish and Wildlife Service' s (Service) final biological opinion on the proposed Tongue River Railroad Company's (TRRC) Additional Rail Line from Ashland to Decker, MT. The biological opinion was prepared in response to your letter dated August 18 requesting formal consultation which was received in our office on August 25, 1995. This document represents the Service's biological opinion on the effects of that action on the bald eagle in accordance with section 7 of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531 et seq.). The Service has examined the proposed project in accordance with the section 7 Interagency Cooperation Regulations (50 CFR 402, 51 FR 19957-19963). This biological opinion refers only to the potential effects on the bald eagle and not the overall environmental acceptability of the proposed project.

Sincerely,

ACTING Field Supervisor
Montana Field Office
U.S. Fish and Wildlife Service

STO

cc: Pat Graham, Director, Montana Department of Fish
Wildlife, and Parks, Helena.
GARD, MT/WY, Ecological Services, U.S. Fish and Wildlife Service, Denver, CO
DES, U.S. Fish and Wildlife Service, Washington, DC
Mr. Thomas Ebzary, Tongue River Railroad Company, Village Center 1, Suite 165, 1500 Poly Drive, Billings, MT 59102
Suboffice Coordinator, Ecological Services, Billings, MT

BIOLOGICAL OPINION

ON

TONGUE RIVER RAILROAD COMPANY'S

ADDITIONAL RAIL LINE FROM

ASHLAND TO DECKER, MT

U. S. FISH AND WILDLIFE SERVICE
MONTANA FIELD OFFICE
HELENA, MONTANA

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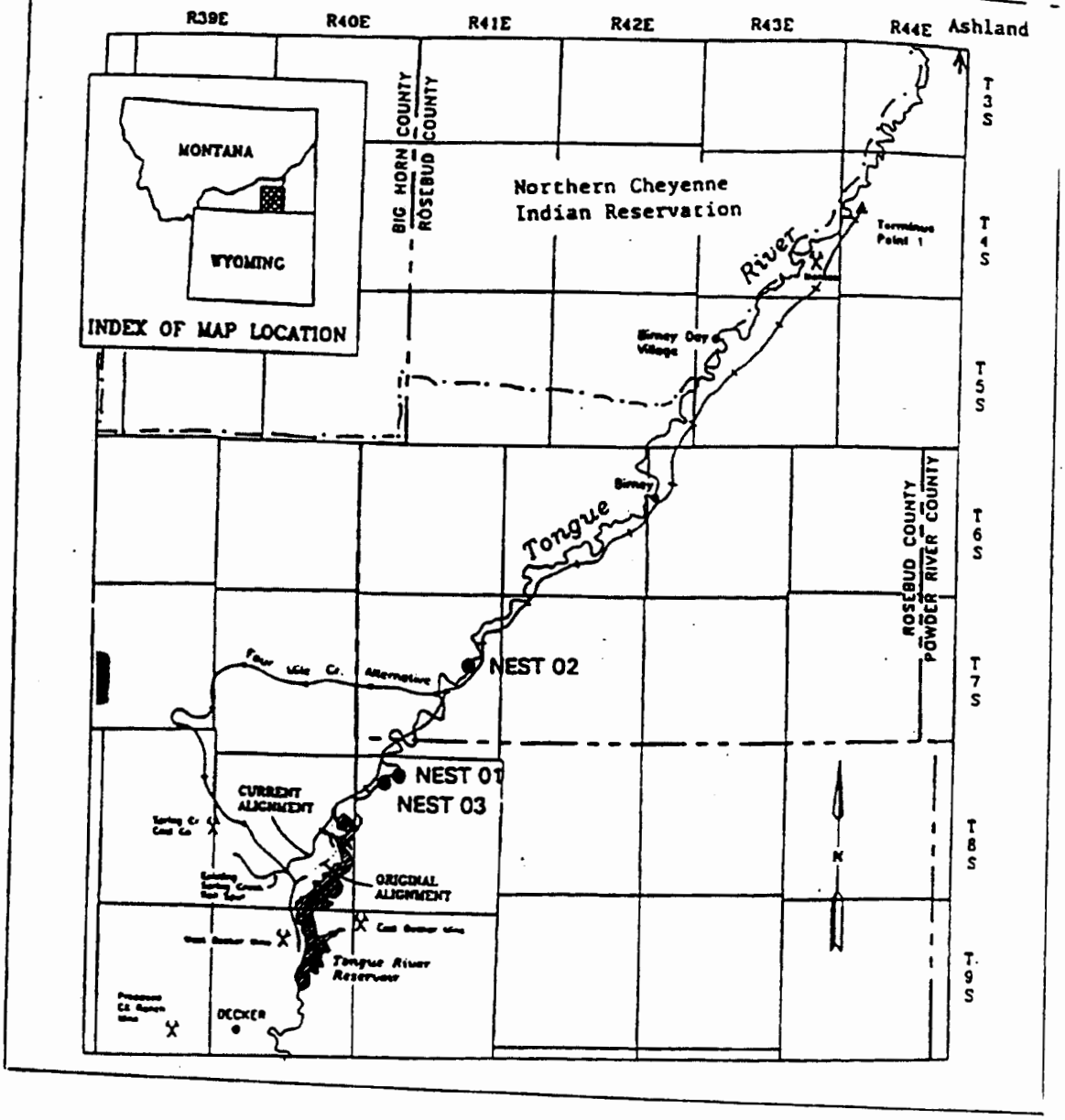

Fig. 1. Location of the TRRC Extension (adapted from ICC, 1994) and bald eagle nests 01, 02 and 03.