

Chapter 3: Comments and Responses

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COMMENTS ON DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT
STATEMENT

STB Finance Docket No. 30186 (Sub-No.3)

Tongue River Railroad Company, Inc.-Construction and Operation-Western Alignment
Tongue River III-Rosebud and Bighorn Counties, Montana

Daniel Dutton
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Good evening. My name is Dan Dutton and I own and operate a farm/ranch operation south of Belfry, Montana in Carbon County. I am here tonight because I believe and value private property rights as detailed in the Constitution of the State of Montana. I believe Article II, Section 3, when it says that Montanans have the right to a clean and healthful environment and that their rights include acquiring, possessing and protecting property. I also believe Article II, Section 17, when it says that no person shall be deprived of property without due process of law and Article II, Section 29, when it says that private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having first been paid to or paid into court for the owner. The development of the Tongue River Railroad (TRR) is a private property rights issue.

These proceedings notwithstanding, one way or another, the square peg known as the Tongue River Railroad will be forced into the round hole known as the Tongue River Valley and monopolistic greed will continue to be served at the expense of the people of Montana. The TRR, or some utility, will occupy a strip of land 130 miles long and 200-300 feet wide to fill a need already being filled by another railroad. Assuming that the TRR will eliminate the need for the rail service currently hauling coal from the Decker and Spring Creek mines and mines in the Gillette, Wyoming area (after all, isn't that why it is being built) this draft EIS does not address, as it must, the environmental impact of abandonment of the currently used rail lines.

1

In earlier public comments on this project, concerns were raised regarding easement versus fee title transfer of condemned private land for right-of-way (ROW) to the TRR. I do not see those concerns addressed in this draft EIS. Easement for a single use (the railroad) is the preferred method as opposed to fee transfer, as it gives the private landowner and the public protection against other unintended uses such as power transmission lines, pipelines, communication cables or lines, etc.

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Much of the data in this draft EIS use to support environmental claims is outdated and needs to be updated. This draft EIS only minimally addresses the environmental conflicts

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that will arise between the TRR activities and the development of coal bed methane (CBM). Mitigation measures in Section 5 do not adequately address TMDL's and changes in water flow relative to CBM development.

4 cont.

The reason for changing the already approved route of the TRR from the Four Mile Creek Alternative to the proposed Western Alignment is strictly economic. Any connection to environmental concerns is bogus, or at best, incidental.

5

Our democracy continues its rapid transformation to a plutocracy and state and federal governments embrace big business. With the state and federal governments embracing a collaboration with corporations and by relying on a voluntary approach to corporate responsibility in developments such as the TRR, the farmers and ranchers and all citizens of Montana are abandoned. We cannot rely solely on corporations for responsible development. Responsible development is first a societal, governmental and individual effort. Too often, the purpose of corporate responsibility is to avoid accountability mechanisms, especially those that affect the bottom line.

Early in my comments, I said that the development of the TRR was a private property rights issue. I have come to think that it is an issue of human rights and human justice. If one is of the libertarian mindset, businesses exist only to make money for their owners and that any diversion of managerial commitment to other activities, such as environmental concerns, is a breach of fiduciary responsibility. Further, if there are environmental or human rights problems arising from the profit making activities of the business, the resulting problems should be dealt with by tort law, meaning that the parties suffering the damages should sue the parties causing the damages. This will soon be played out in condemnation procedures. The enjoyment of human rights is not just about enforcing one's own rights but it is also about accepting the responsibility for respecting the rights of others.

Thank you.

SEA's Response to Comment Letter P1
Daniel Dutton

- P1.1 The TRRC project does not involve or require the abandonment of any existing rail lines. The existing rail lines on which coal is hauled from Decker and Spring Creek mines are anticipated to continue to carry non-coal freight traffic and coal trains, particularly those servicing the Sarpy Creek, Big Sky, and Western Energy mines. These lines would also serve as an auxiliary route to the Tongue River line if the latter were to be temporarily inaccessible for some reason.
- P1.2 If this project is approved, TRRC will then acquire the property needed to build the line by purchasing it from landowners or if necessary through condemnation under State law.
- P1.3 For a discussion of the validity of the information used to prepare the Draft SEIS, please refer to Master Response 4, Information Used in Preparing the EIS.
- P1.4 The comment raises concerns related to potential cumulative impacts that could occur as a result of CBM development in combination with the proposed project, including changes in TMDLs. The Draft SEIS in Chapter 6 provided an extensive evaluation of cumulative effects including cumulative effects of the proposed TRRC rail line in conjunction with CBM development. SEA has also updated some of that analysis in this Final SEIS based on the most recent information available from BLM. Please refer to Master Response 21, Adequacy of Cumulative Analysis.
- P1.5 TRRC, in its application to the Board for approval of the Western Alignment, has indicated that it believes the Western Alignment would provide a more efficient and cost-effective route for transporting coal to Midwestern markets than the approved Four Mile Creek Alternative.

The purpose of the SEIS is to analyze the environmental effects of the proposed Western Alignment and compare them to the potential effects of the construction and operation of the previously approved Four Mile Creek Alternative. By preparing this SEIS, SEA has concluded that the proposed Western Alignment would result in similar, but slightly fewer environmental effects than the Four Mile Creek Alternative, and accordingly recommends that it should be approved.



COMMENT CARD

There are three ways to submit comments on the Tongue River III Draft Supplemental Environmental Impact Statement.

1. Provide verbal comments at this public meeting (all verbal comments will be transcribed),
2. Submit written comments to the address shown below, or by placing this comment card in the comment box located at the sign-in area; or
3. Submit your comments electronically at the Surface Transportation Board's website, www.stb.dot.gov.

NAME: David Davenport

ADDRESS: 2762 Rosebud Creek

Forsyth, mt

Rosebud Conservation District

TELEPHONE: _____

DATE: _____

COMMENT: I would like to address Measure 45 on page 4-112
stream bank stabilization. The use of rock for riprap is a
problem. First riprap is a bad environmental practice. Barbs
designed right would be a much better erosion control as
well as farther downstream erosion. Barbs slow rivers down
and help in promoting vegetation ect.

The Rosebud Conservation District would prefer the use of
formed cement blocks in stream bank stabilization instead
of rocks. Rocks are removed from wherever they come
from & leave exposed soil which will in turn cause erosion
elsewhere, more sediment in rivers ect. These blocks weigh in
the neighborhood of a ton so wouldn't be so apt to move &
therefore reduce rock collection. Would strongly encourage DFC
& Corps of Engineers to consider this as being better stewards
than Burlington Northern & many other railroads who are always
over

Please use the reverse side or attach any additional pages.

To submit comments by mail, send to:
 Surface Transportation Board
 Case Control Unit
 Washington, DC 20423
 Attn: Kenneth Blodgett, STB Docket No. FD 30186 (Sub-No. 3)

seem to be in an emergency due to rocks moving from riprap
and fear of losing railroad. Never has an opportunity been able
to address a new railroad dealing with stabilization in our district
so we encourage you to consider the cement blocks.

SEA's Response to Comment Letter P2
David Davenport (November 16, 2004)

P2.1 A discussion of streambank stabilization methods is provided in recommended Mitigation Measures 44, 45, and 47. As discussed in Mitigation Measure 44, TRRC would be required to consult with appropriate federal, state, and local agencies during the design process of the stream crossings and would incorporate reasonable requests from these agencies into the design. In addition, as described in recommended Mitigation Measure 45, TRRC would comply with the Army Corps of Engineers' Section 404 permit requirements and would follow EPA's guidance for riverbank stabilization methods. Methods that could be used for streambank stabilization include, but are not limited to, placing or planting logs, trees, and other vegetative plantings with rock riprap along bridge sites and stream encroachment areas. In addition, under recommended Mitigation Measure 47, TRRC would be required to use, if possible, naturally occurring trees, shrubs, and grass to stabilize banks with riprap. Gabions—rock-filled wire baskets that are placed on a streambank to provide greater stability and erosion control protection—shall be used only as a supplement where such methods would improve fish habitat or in cases where engineering requirements dictate.

November 16, 2004

My name is Clint McRae. I run and operate our family ranch, Rocker Six Cattle Company with my family and my parents. My address is 3633 Rosebud Creek Road, Forsyth, Montana, 59327. The proposed Tongue River Railroad, if built, would cross approximately 3 ½ miles of our summer pasture, which is in the original 89 miles of Tongue River 1. Although this document is focused on the Western Alignment, there are several references to the lower 89 miles. My comments will be addressed to that section.

First, the Multi-Agency Task Force, or Task Force, consists of individuals that represent a very small amount of public land. The vast majority of landowners in the Tongue River valley are private landowners, yet not one is represented on the Task Force. There is simply no way that a group of state and federal agency representatives can represent the best interests of private landowners. Yet, the decisions this body will make directly affect our operations and our livelihoods. The decisions made by this group will affect 130 miles of a major river valley, and yet there is no one to represent our best interests. This is a travesty. I formally request that at least one negatively impacted landowner fill a seat on the Task Force. Anything less is irresponsible.

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Second, Chapter 4, p. 61 states that the railroad would....."increase herding time between pastures, but would not constitute a significant impact." According to whom, the TRR? The TRR and SEA, to my knowledge, have little or no expertise or experience in raising or moving cattle. They have no credibility deciding what is or is not an impact on our operation. The railroad would sever our summer pasture and create a significant amount of labor to move cattle across the rail line, where now all we need to do is open a gate. If we would try to move cattle across the tracks with 14 trains a day minimum, timing would be critical. I have yet to talk to a landowner that would claim that this is not a major headache. If the railroad is built, there will be severance. Cattle will be difficult to move across tracks because of severance, and we will have one side with water, the other with grass. To claim this is not severance shows the lack of understanding by the TRR and SEA.

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The document states that crossings can be negotiated for ranch access and for fire access. A few years ago when we were negotiating with Francis Waldhauser of the TRR about an access agreement for the geo-tech work, he mentioned that we could negotiate for crossings, but the private landowner would be responsible for the cost of material. Further, he stated that we as landowners would be held liable for these crossings. Was he correct? If these crossings are negotiated, who pays for the crossing material? If a crossing is negotiated, who assumes liability? We participate in the Block Management Program. Who assumes liability if a hunter is injured or killed at one of these crossings?

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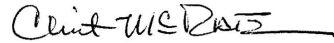
The document mentions (Chapter 5, p.21) that the County road will need to be relocated 8 or 9 times. Exactly where are these locations? We request more specific maps of these

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locations, as well as legal descriptions, length of the relocation, etc. These relocation sites will be moved upon private land, taking more of our land out of production. Who will pay for these re-locations? The TRR? The County taxpayer?	4 cont.
The document mentions the “re-alignment” of the railroad somewhere in Tongue River 1. Where is this “re-alignment?” Again, we request detailed maps with section numbers and a legal description of the re-alignment. The maps supplied in the document are grossly inadequate in detail.	5
The rail line will have several sidings. How long will these sidings be? Where will they be located? Again, we request detailed maps with section numbers and legal descriptions.	6
The document mentions work camps, as an example, one will be “near Ashland.” Exactly where will these work camps be? Again, we request detailed maps with section numbers and a legal description.	7
Fencing the Right of Way (ROW) remains a concern. Not only should the TRR be required to fence the ROW (at the landowners request), they should also be required to maintain the fence. Too many times on other rail lines in the area, a fence is taken down to repair the tracks. More often than not, this fence is not fixed after the track repair is finished. There are liability questions with this problem as cattle wander onto the tracks, and a simple solution is to require the TRR to maintain the ROW fence.	8
Weeds are another issue. The document claims that a weed plan is, or will be in place. This sounds good on paper, but the TRR needs to take care of the weeds from fence line to fence line along the ROW. Too many times, weeds are treated only a few feet off the sides of the tracks leaving untreated weeds from the end of the spray boom to the fence line. Untreated weeds and grass can also be a fire hazard. The TRR needs to be directed to treat the <u>ENTIRE WIDTH</u> of the right of way.	9
The Document mentions in chapter 4, p. 28 and 29 that the Total Maximum Daily Loads (TMDL’s) will be completed by the spring of 2004. I serve on the committee that is working on the TMDL’s, and it is not finished. At this point, we do not know when it will be complete.	10
Lastly, we request that the SEA and the TRR complete one new Environmental Impact Statement. The Original 89 miles was permitted in 1986, and we have been holding off on improvements on the Tongue River side of the ranch since then. Many things have changed in the 18 years that this permit has existed, and it is the duty of the Surface Transportation Board to represent the best interests of the public and produce one document, rather than a piecemeal, band-aid approach we have experienced for the last 18 years. Bouncing back and forth between a Western Alignment document that is still in draft stage, and cross referencing it to a document that is 18 years old is irresponsible. The Tongue River valley is one valley, not two or three, please treat it as one, do what is right, and simply draft one document.	11

Thank you for the opportunity to comment on the Draft. I look forward to reading the answers to the questions I have raised, and following through on the requests that have been made.

Clint McRae

A handwritten signature in black ink that reads "Clint McRae". The signature is written in a cursive style with a long horizontal line extending from the end.

3633 Rosebud Creek Road
Forsyth, MT 59327

SEA's Response to Comment Letter P3
Clint McRae (November 16, 2004)

- P3.1 The purpose of the Task Force, as detailed in recommended Mitigation Measure 14, is to approve the implementation and monitoring of biological mitigation measures for the entire rail line. The members of the Task Force would be the Board, Montana Department of Fish, Wildlife and Parks (MT DFWP), Montana Department of Natural Resources and Conservation (MT DNRC), United States Fish and Wildlife Service (USFWS), Bureau of Land Management (BLM), and United States Corps of Engineers (Corps). These agencies are the appropriate entities for this purpose. Property owners would be welcome to address the Task Force and submit documentation relevant to their proceedings.
- P3.2 The comment is concerned that the project would lead to the severance of pasture land that is currently used for cattle grazing and that the movement of cattle between pastures over the rail line would negatively affect cattle ranching operations. For a discussion of this issue, please refer to Master Response 18, Land Use Effects of the Project.
- P3.3 Private road crossings of the rail line on private property would be negotiated with each landowner. It is anticipated that a private road crossings would only be necessary to replace an existing private road that would be severed by the rail line. In these cases, it is anticipated that TRRC would be responsible for the reasonable costs associated with replacing the portion of the private road that would be severed and the rail crossing itself. The rail crossing would be located within the TRRC right-of-way, and as a result, TRRC would be responsible for constructing and maintaining proper signage and control at public and private grade crossings to the extent required by applicable regulations. Any party traversing such crossings is responsible for his or her actions and complying with proper signage and control in crossing the rail alignment.
- P3.4 Proposed road relocations are shown on the aerial photographs, which are included in Appendix A of this Final SEIS. TRRC would be responsible for the cost of all public road relocations.
- P3.5 Please refer to Appendix A of this Final SEIS, which includes illustrations that show the proposed realignments relevant for the line approved in Tongue River I.
- P3.6 The exact location(s) and lengths of sidings has not yet been determined. However, TRRC anticipates that all sidings would be located within the 400-foot right-of-way that has been analyzed as part of the environmental review in Tongue River I, Tongue River II and Tongue River III.
- P3.7 The exact location of the work camps will not be know until further negotiations between TRRC and landowners take place.

- P3.8 The revised recommended Mitigation Measure 2 (ROW Fencing) would require TRRC to construct fencing along the entire railroad right-of-way. The general fencing options to be used would be developed by TRRC and approved by the Task Force. If a property owner requests that a different type of fencing be used, costs would be negotiated between TRRC and the property owner. Regardless of whether the fence is a type approved by TRRC or specifically requested by the property owner, TRRC would be responsible for maintenance of the fence.
- P3.9 Recommended Mitigation Measure 21 addresses the fire hazard presented by weeds within the railroad ROW. This measure requires that SEA construct the rail line in compliance with county weed control plans for Rosebud and Big Horn counties, Montana. Except for the portion of the right-of-way described in Mitigation Measure 85 in and near the MCFH, TRRC, in consultation with local ranchers, the county extension agents, and the Task Force, shall develop a reasonable written Noxious Weed Control Program prior to commencing any construction of the rail line. The program shall include requiring construction methods that minimize the introduction and spread of noxious weeds. SEA concludes that implementation of this modified measure would be adequate to ensure that the impacts associated with noxious weeds from the construction of either the proposed Western Alignment or the approved Four Mile Creek Alternative would not be significant.

SEA is also recommending five mitigation measures related to the prevention and suppression of wildfires. In the event that a fire did start within the railroad ROW, SEA believes that the implementation of recommended Mitigation Measures 9-13 would be adequate to ensure that wildfire impacts resulting from implementation of the proposed Western Alignment or the Four Mile Creek Alternative would not be significant.

- P3.10 This commenter indicates that the State's schedule for completing a water quality restoration plan and associated TMDLs for the Tongue River watershed TMDL planning unit has been moved back from 2004 to an indefinite date.

This is reflected in Master Response 20, Total Maximum Daily Load (TMDL), which provides an update regarding the current status of TMDLs for the Tongue River watershed based on discussions with Montana DEQ.

- P3.11 The comment takes the position that one complete EIS should be completed for Tongue River I, Tongue River II, and Tongue River III. For a discussion of this issue, please refer to Master Response 16, Need for a New EIS.

I'm Duane Mathison, Custer County Commissioner. I also farm along the Tongue River.

I strongly support the Western Alignment of the proposed Tongue River Railroad. I see this amendment as an improvement to the whole project, both from environmental concerns and from rail use concerns.

The remediation improvements should set well with the impacted property owners of the Tongue River Valley, as they only improve upon the existing approved applications.

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The timely completion of the proposed Tongue River Railroad and the development of the Otter Creek Coal Tracts can create an economic boom in southeastern Montana that will be felt across the state and throughout our school systems. Coal sales and power generation create many well-paying jobs, provide significant new tax base and should at least stabilize, if not improve upon, our eroding population base. The completion of the Tongue River Railroad opens the door to this potential development bonanza.

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I thank you for the opportunity to comment on this action.

**SEA's Response to Comment Letter P4
Duane Mathison (November 16, 2004)**

P4.1 Comment noted.

P4.2 The comments made in support of the project are noted.



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2. Submit written comments to the address shown below, or by placing this comment card in the comment box located at the sign-in area; or
3. Submit your comments electronically at the Surface Transportation Board's website, www.stb.dot.gov.

NAME: GERALD A. TALLENT

ADDRESS: 20 TALLENT LANE
FORSYTH MT. 59327

TELEPHONE: 406-346-2819

DATE: 11-16-04

COMMENT: I DON'T SEE ANY REASON TO BUILD A
NEW LINE ~~WANT~~ TO MOVE COAL WHEN THERE
IS ALREADY A LINE TO MOVE COAL & HAS BEEN
FOR OVER 30 YEARS THAT I KNOW OF. I AM
FROM A RAIL ROAD FAMILY AND HAVE BEEN
THREATENED WITH THIS RAIL LINE FOR YEARS.
FORSYTH WOULD LOSE OVER 100 JOBS WHICH
WOULD MEAN THE LOSE OF 6 TO 7 MILLION
DOLLARS TO FORSYTH & MILESCITY. IT WOULD
ALSO DESTROY MILES OF PRIME FARM LAND.
THERE WOULD ALSO BE MINE JOBS LOST.

When submitting comments please be as specific as possible and substantiate your concerns and recommendations.

Please use the reverse side or attach any additional pages.

To submit comments by mail, send to:
Surface Transportation Board
Case Control Unit
Washington, DC 20423
Attn: Kenneth Blodgett, STB Docket No. FD 30186 (Sub-No. 3)

SEA's Response to Comment Letter P5
Gerald Tallent (November 16, 2004)

- P5.1 The comment questions the need for the railroad on grounds that there are existing rail lines that already provide for the transport of coal from this region to markets out-of-state. For a discussion of project need, please refer to Master Response 9, Determination of Public Convenience and Necessity.
- P5.2 As shown in Table 4-41 of the Draft SEIS, both the proposed Western Alignment and the Four Mile Creek Alternative would create a demand for jobs in Forsyth and Miles City during the construction period. Table 4-42 of the Draft SEIS shows the associated distribution of construction wages in Miles City and Forsyth. As shown in Table 4-47 of the Draft SEIS, during the first year of operation, the Western Alignment could result in a net loss of seven regional railroad jobs; however the Four Mile Creek Alternative would result in a net gain of four jobs. SEA believes that this estimate of net job change underestimates the amount of new jobs the entire rail line from Miles City to Decker would create regionally, because it does not take into account that train crew jobs would increase as TRRC begins to move tonnage from new mines in the Ashland area that are unlikely to be opened in the absence of the rail line via either the proposed Western Alignment or the approved Four Mile Creek Alternative. SEA's estimates also do not take into account the fact that significant new job opportunities would become available at any new surface mines in the Ashland area. (See Chapter 6, "Cumulative Effects," for a discussion of potential regional job increases.)

Therefore, the estimate of net job change that would result from construction and operation of the proposed Western Alignment in the Draft SEIS is conservative. In addition, localized fiscal impacts of the proposed Western Alignment on towns along the existing BNSF line through Huntley would be minimized, because that line would continue to carry a considerable number of non-coal freight traffic and some coal trains, particularly those servicing the Sarpy Creek, Big Sky, and Western Energy mines.

- P5.3 SEA acknowledges that the project would result in the permanent loss of prime farmland. While the farmland could not be replaced, implementation of recommended Mitigation Measure 1 would reduce the potential socio-economic impacts related to the loss of farmland.

SEA's estimates of jobs associated with the project does not take into account the fact that significant new job opportunities would become available at any new surface mines in the Ashland area. (See Chapter 6, "Cumulative Effects," for a discussion of potential regional job increases.)

Comments for Tongue River III Draft Supplemental EIS

I am Mark Fix and I am a rancher on the Tongue River that will be crossed by the proposed Tongue River Railroad. I sit on the Board of the Northern Plains Resource Council, a grassroots conservation and family agriculture organization. Northern Plains organizes Montana citizens to protect water quality, family farms and ranches, and our unique quality of life.

Before I start with my testimony I would like to tell you all a story about a recent experience with the Surface Transportation Board. I traveled to Washington D.C. over a year ago to discuss impacts of Coal Bed Methane with lawmakers. It was the first time I had ever been to Washington DC. I had some spare time and wanted to go and talk with Dana White in the Surface Transportation Board Office. I was told that I could not meet with Dana because it was considered ex-parte communication. I am not a lawyer and I had no intention of discussing items related to the Northern Plains lawsuit related to the railroad. I thought the Surface Transportation Board was supposed to be a public agency and was frustrated that I was not allowed access to people within the office. I guess this is my only chance to let the STB know what I think about the railroad, so I better make it good.

I will be presenting official testimony for the Northern Plains Resource Council and myself. We will both provide more detailed comments before the December 6th comment deadline.

Let me say upfront that Northern Plains and I personally oppose the Tongue River Railroad for three very simple reasons:

- | | |
|--|---|
| 1. It's unnecessary: the railroad would service coal operations that are already serviced by other railroads. Both Decker and Spring Creek have rail access already. | 1 |
| 2. It would dissolve Montana's competitive advantage: the railroad would take away a competitive advantage currently enjoyed by coal mined in Colstrip by shortening the distance to Midwest markets for Gillette coal. As my friend and fellow-rancher Art Hayes, Jr. is fond of saying, the Tongue River Railroad would be Montana's biggest gift to Wyoming. | 2 |
| 3. Finally, we oppose this railroad because it would turn the Tongue River Valley into an industrial zone. It would destroy farm and ranch land, contribute to the spread of weeds, burden ranchers with cumbersome and dangerous railroad crossings, cut livestock off from water sources or pastures, and destroy the peace and quiet that those of us who farm and ranch in the area enjoy. | 3 |

It would be one thing to accept those kinds of impacts if we knew that the railroad actually served some sort of public good. Instead, as I said before, it services coal operations already served by other railroads and actually takes away a competitive advantage for coal mined in Colstrip.	4
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In addition to these three simple reasons to oppose the railroad, we have other concerns. No right of way has been purchased across my land as of this date and no contract for an easement has been negotiated. Although the railway was approved years ago, no action has taken place. How long will a permit last? I thought that railroads were supposed to be built within 3 years of approval.

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We agree with the Section of Environmental Analysis of the Surface Transportation Board that the development of the Otter Creek tracts is speculative and probably will not happen. We urge the Surface Transportation Board to re-examine the financial analysis provided by Tongue River Railroad because we believe the financial analysis included hauling Otter Creek Coal. If the Otter Creek Coal is not developed, the income provided from Otter Creek Coal should not be included in the analysis.

6

A few days ago I traveled down the Tongue River Canyon. I noticed that there are rock cliffs along the canyon and there does not appear to be much soil on top of the cliffs. I suspect that most of the Western Alignment is underlain by this rock. If the 17 million cubic yards of soil that needs to be moved consists primarily of rock the cost estimates to build the Western Alignment are much lower than they should be. Where is the information from the geotechnical tests that was done several years ago? Was there any geotechnical information given for the Western Alignment area?

7

We are concerned that construction of the railroad could contribute to further degradation of the Tongue River. I have taken water samples at Miles City all this summer and the standard for salinity has been exceeded all summer. We believe that the addition of up to 10,600 tons of sediment per year into the Tongue River from the construction of the Western Alignment would cause an even greater exceedence of the salinity standard. Northern Plains believes that degradation in the river is the result of coal bed methane development in Montana and Wyoming. There will be more development of methane in the future and this combined with the impacts caused by construction of the Tongue River Railroad will very likely destroy our irrigated land along the river and drastically affect the fishery.

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This Environmental Impact Statement did not do enough analysis on the impacts of the entire railroad, including the original proposal, which would have run from Miles City to a site near Ashland, the additional spur to Decker – known as Tongue River II, and the new alignment. The information provided in the original analysis of the railroad is stale and does not address coal bed methane development and other new information. The Surface Transportation Board needs to do a new study of impacts of the entire 130-mile railroad. The piecemeal approach that has been taken is not acceptable.

9

The wildlife studies included in the EIS are unacceptable. You cannot do an adequate study from a helicopter flyover of the area. As a rancher, I can tell you that you must be on the ground to really see what's happening. The EIS states that access could not be obtained for a wildlife study. How many people were contacted to make that assertion? No one ever contacted me to see if they could do a wildlife study.

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This EIS fails to look at the cumulative impacts. Although it acknowledges other projects, it fails to look at how the projects add to the effects caused by the railroad. Since the railroad was first proposed in 1979, we now have the potential for between 10,000 and 26,000 coal bed methane wells in the same area that would be impacted by the railroad. These projects will damage private farms and ranches. In addition to development in Montana, up to 51,000 methane wells are expected in Wyoming. The EIS needs to examine these impacts as a whole to get a clear picture of what we face.	11
We don't have to imagine that coal bed methane development and the railroad could come into conflict: Powder River Gas's Coal Creek Project will drill wells directly on the route proposed for the Western Alignment. This highlighted to me that no coordination is taking place between the Surface Transportation Board and the BLM for projects.	12
No analysis has been done to document the loss of value to property that will occur with the construction of the TRR.	13
No analysis was done to document the potential loss to agriculture when the soils are permanently damaged by the degradation in the irrigation water caused by sediment loading from TRR, in addition to sodium and salinity damage from coal bed methane.	14
There is no baseline data included for water quality in the Tongue River or soil quality on the irrigated farmland that will be affected by the sediment loading in the river.	15
The EIS states that dust suppression water may be purchased from Tongue River Water Users (TRWU). This water is designated for agriculture use and we only got 48 percent of the contract water from the TRWU this year. I had to purchase some water from the Northern Cheyenne to irrigate my crops this year. Simply put, there's no additional water available. According to the draft Total Maximum Daily Load (TMDL) done on the Tongue River, 300,000 acre feet of water flow in the Tongue River per year compared to 5.5 million acre feet of water rights. The Tongue is over allocated already. It doesn't appear that information from the TMDL work on the Tongue River has been included in this EIS.	16
The major source of income in Montana is agriculture and the EIS fails to account for the impact the Tongue River Railroad will have on the agriculture economy in the Tongue River area.	17
In summary we believe that the Tongue River Railroad should not be built. We request that the Surface Transportation Board revoke the permit for the entire line due to the lack of diligence and need.	18
I thank you for the opportunity to comment and will submit additional, more in depth comments, before the deadline.	

SEA's Response to Comment Letter P6
Mark Fix (November 16, 2004)

- P6.1 The commenter questions the need for the railroad on grounds that there are existing rail lines already servicing the mines in this region. For a discussion of project need, please refer to Master Response 9, Determination of Public Convenience and Necessity.
- P6.2 The commenter states that the project would remove a competitive advantage in the coal market that is currently held by Montana. For a discussion of this issue, please refer to Master Response 11, Loss of Competitive Advantage Held by Montana Coal.
- P6.3 SEA acknowledges that the project would affect the setting and land uses in the Tongue River Valley. However, SEA does not believe that the project would result in the conversion of the Tongue River Valley into an industrial zone. The Tongue River Valley would continue to be largely rural in character despite the construction and operation of the project. As stated in Chapter 8 of the Draft SEIS, the permanent conversion of some farm and ranch land is acknowledged and recognized by SEA as a significant and unavoidable impact of the project. The potential spread of noxious weeds would be adequately addressed through implementation of recommended Mitigation Measure 21. Regarding livestock, recommended Mitigation Measure 3 provides for the installation of cattle passes by TRRC at the request of landowners. TRRC would work with landowners to identify appropriate locations for cattle passes and private grade crossings for equipment. These cattle passes would facilitate the movement of cattle between water sources and pastures.
- P6.4 The commenter questions whether the project would have public good benefits, given that there are already rail lines servicing this region. The comment also raises concerns that the project would eliminate Montana's competitive advantage in the coal market. For a discussion of these issues, please refer to Master Responses 9, Determination of Public Convenience and Necessity, and 11, Loss of Competitive Advantage Held by Montana Coal.
- P6.5 The commenter is concerned that no right-of-way or access easements have been established on his property. The commenter also questions the length of time for which a permit to construct the rail road is valid after issuance. For a discussion of these issues, please refer to Master Response 18, Land Use Effects of the Project, and 13, Imposition of a 3-year Time Limit on Construction.
- P6.6 Table 2-2 in the Draft SEIS estimates both Ashland area coal tonnage (including the Otter Creek tracts) and the Decker and Wyoming coal tonnage. The table is based on information on the hauling of coal from Decker and Wyoming that was supplied by TRRC. Chapter 2 of the Draft SEIS further explains that no applications currently exist for the development of mines in the Ashland area.

However, as the Draft SEIS correctly notes, the construction of the rail line could increase the likelihood of those mines being developed. The viability of the rail line, however, does not depend upon their development. As discussed in Section 2.2 and shown in Table 2.2 of the Draft SEIS, TRRC states that Wyoming and Decker area coal would use the proposed rail line from Miles City to Decker during the next two decades.

- P6.7 The estimates to build the proposed Western Alignment take into account earthwork, which includes the construction practice of breaking rocks (sandstone, mostly) into smaller pieces, and then using the remnants as fill or for use as rip rap.
- P6.8 The commenter expresses concern that the project by itself, and in combination with other projects, could have an adverse effect on the water quality of the Tongue River and related fisheries. For a discussion of these issues, please refer to Master Response 12, Effects of the Project on Erosion and Sedimentation Rates, and 20, Total Maximum Daily Load.
- P6.9 The commenter states that the Draft SEIS did not provide sufficient analysis of Tongue River I and Tongue River II and that a single EIS should be completed for the entire rail line from Miles City to Decker. For a discussion of this issue, please refer to Master Responses 16, the Need for a New EIS. In regards to the issue of potential cumulative impacts associated with CBM development in this region, please refer to Master Response 21, Adequacy of Cumulative Analysis.
- P6.10 The commenter expresses concern regarding the methodology followed for completing wildlife studies. For a discussion of the adequacy of the approach taken by SEA in conducting wildlife studies, please refer to Master Response 1, Adequacy and Timing of Studies.
- P6.11 The commenter is concerned that the proposed project, in combination with CBM development, could have significant adverse effects that have not been sufficiently document in the Draft SEIS. For a discussion of these issues, please refer to Master Response 21, Adequacy of Cumulative Analysis.
- P6.12 The commenter expresses concern that no coordination is taking place between BLM and SEA regarding BLM's projects in the Tongue River Valley and TRRC's proposed rail line. Coordination between these two agencies is discussed in Master Response 21, Adequacy of Cumulative Analysis.
- P6.13 Potential changes in property values do not constitute a physical effect on the environment that is required to be addressed under NEPA. The negotiation for the acquisition of properties would include consideration of any effect this project would have on the subsequent fair market value of the property. See Master Response 18, Land Use Effects of the Project, for more information on the negotiations that would take place between landowners and TRRC.

P6.14 The commenter is concerned that water quality in the Tongue River would be degraded as a result of this project, which could have an adverse effect on agricultural crops that are irrigated with water extracted from the Tongue River. For a discussion of the project in relation to water quality in the Tongue River, please refer to Master Response 12, Effects of the Project on Erosion and Sedimentation Rates.

P6.15 The Draft SEIS provides a review of background water quality data for the Tongue River on pages 4-28 through 4-29 of Section 4.2.4.2 – Water Quality in the Tongue River. Suspended sediment data collected by the U.S. Geological Survey from 1985 through 2003 at two locations on the Tongue River are summarized in Table 4-9 on page 4-30.

A more comprehensive evaluation of baseline water quality for the Tongue River watershed was completed by the U.S. EPA and Montana DEQ in March 2003. The document is entitled *Total Maximum Daily Load Status Report – Tongue River TMDL Planning Area*, and is available through the DEQ website. The address for accessing this document is:
[http://www.deq.state.mt.us/wqinfo/TMDL/StatusReports/TongueRiverTMDLStatusReport\(3-14-03\).pdf](http://www.deq.state.mt.us/wqinfo/TMDL/StatusReports/TongueRiverTMDLStatusReport(3-14-03).pdf).

Information contained in this report is reflected in DEQ's water quality assessments for the Tongue River and its tributaries, which have been summarized in Section 4.2.4.2 of the Draft SEIS.

In regards to irrigated farmland adjacent to the Tongue River, Section 4.3.4, Hydrology and Water Quality, in the Draft SEIS concludes that implementation of the mitigation measures would be adequate to ensure that impacts associated with increases in total suspended solids would not be significant. For additional information, please refer to Master Response 20: Total Maximum Daily Load (TMDL) as well as Master Response 12: Effects of the Project on Erosion and Sedimentation Rates.

P6.16 The commenter is concerned that there is an insufficient amount of water in the Tongue River Valley watershed to serve this project. For a discussion of this issue, please refer to Master Response 19, Availability of Water During Construction.

P6.17 SEA acknowledges that the proposed Western Alignment would result in the permanent loss of up to 20.5 acres of irrigated and non-irrigated farmland and up to 652 acres of rangeland. The Four Mile Creek Alternative would result in the permanent loss of up to 61.8 acres of irrigated and non-irrigated farmland and up to 703 acres of rangeland.

Mitigation Measure 1 was developed to address this impact. The measure states that TRRC would be required to negotiate compensation for direct and indirect loss of agricultural land on an individual basis with each landowner whose property would be affected as a result of the construction and operation of the line between Miles City and Decker. TRRC would also assist landowners in identifying and developing alternative agricultural uses for severed land, where appropriate. Furthermore, TRRC would apply a combination of alternative land use assistance and compensation as necessary and agreed upon during right-of-way negotiations. SEA believes this condition is an appropriate way to address this impact.

P6.18 Comment noted.



COMMENT CARD

There are three ways to submit comments on the Tongue River III Draft Supplemental Environmental Impact Statement.

1. Provide verbal comments at this public meeting (all verbal comments will be transcribed),
2. Submit written comments to the address shown below, or by placing this comment card in the comment box located at the sign-in area; or
3. Submit your comments electronically at the Surface Transportation Board's website, www.stb.dot.gov.

NAME: CLIFFORD L. L. OJICE

ADDRESS: Box 1141

FORSYTH MT 59327

TELEPHONE: 406 356 2608

DATE: Nov 2004

COMMENT: THIS CONTROVERSY HAS BEEN GOING ON SINCE 1983
I HAVE BEEN INVOLVED FOR MOST OF THE TIME, AND I SEE NO NEED
TO BUILD THIS TONGUE RIVER RAILROAD I FEEL ALL IT DOES IS
GIVE A DIRECT CORRIDOR FOR THE MOVEMENT OF WYOMING COAL
TO EASTERN MARKETS, WE ALREADY HAVE A RAILROAD (BNSF)
FROM DECKERTO HUNTLEY AND MILES CITY EAST. THE TONGUE
RIVER IS A PRISTINE RIVER VALLEY TRR SHOULD NOT BE PUT THROUGH
BECAUSE IT IS NOT NEEDED NOW OR IN THE FUTURE.

I SEE THE TRR AS NOTHING BUT A SCHEME TO GET MORE AND MORE
MONEY FROM FINANCING, NOT ONE SHOVEL FULL OF DIRT HAS BEEN
TURNED OVER ITS TIME FOR PEOPLE TO WAKE AND PUT THIS
THING TO REST, NOT NEEDED NOT FEASIBLE! IF THIS IS ALLOWED
MORE THAN ONE HUNDRED HIGH PAYING RAILROAD JOBS WOULD BE
PERMANENTLY LOST, NO CREWS WOULD BE BASED IN MILES CITY.

I WAS THE LEGISLATIVE REPRESENTATIVE FOR UNITED TRANSPORTATION UNION 488

Glendive and FORSYTH

Please use the reverse side or attach any additional pages.

UNTIL I RETIRED IN JUNE OF 2004

To submit comments by mail, send to:
 Surface Transportation Board
 Case Control Unit
 Washington, DC 20423
 Attn: Kenneth Blodgett, STB Docket No. FD 30186 (Sub-No. 3)

SEA's Response to Comment Letter P7
Clifford Locke (November 16, 2004)

- P7.1 The commenter questions the need for this project given the existing rail lines that already serve the region and suggests that the project would disproportionately benefit Wyoming coal markets. For a response to these concerns, please refer to Master Responses 9, Determination of Public Convenience and Necessity, and Master Response 11, Loss of Competitive Advantage Held by Montana Coal.
- P7.2 The project could result in the loss of some jobs on the BNSF rail lines. However, as shown in Table 4-47 in the Draft SEIS, the estimated net loss of regional railroad jobs under the proposed Western Alignment is seven jobs. Moreover, SEA believes the estimates in Table 4-47 are conservative in that they do not account for new jobs that the entire rail line would create at the regional level. Nor do these estimates take into account that train crew jobs would increase if TRRC begins to move tonnage from new mines in the Ashland area that are unlikely to be opened in the absence of the rail line via either the proposed Western Alignment or the approved Four Mile Creek Alternative. Assuming that TRRC would operate the railroad, TRRC would use a crew of approximately 50 employees. An additional 49 people would be employed by TRRC to perform administrative and maintenance functions, for a total of 99 jobs. Operation of the Four Mile Creek Alternative would require approximately 11 additional crew members, for a total of approximately 110 jobs.

It is not yet known whether crews would be based in Miles City or in some other location. A determination on the location of crews would be made after operating agreements are reached between TRRC and BNSF.



COMMENT CARD

There are three ways to submit comments on the Tongue River III Draft Supplemental Environmental Impact Statement.

1. Provide verbal comments at this public meeting (all verbal comments will be transcribed),
2. Submit written comments to the address shown below, or by placing this comment card in the comment box located at the sign-in area; or
3. Submit your comments electronically at the Surface Transportation Board's website, www.stb.dot.gov.

NAME: Lee E. Akers

ADDRESS: 610 Knight St.

Miles City MT

59301-2525

TELEPHONE: (406) 234-2635

DATE: 16 NOV 04

COMMENT: It is imperative that the Tongue River

Railroad go through.

The financial health of Miles City,

Montana, and the nation is at stake

The nation needs our areas high quality

coal.

The clean-burning coal can be hauled

more economically via the Tongue River route.

Without it, Burlington Northern Santa Fe

can not operate through Southern Montana.

They cannot operate on grain alone.

Southern Montana cannot continue to

survive without it.

When submitting comments please be as specific as possible and substantiate your concerns and recommendations.

1

Please use the reverse side or attach any additional pages.

To submit comments by mail, send to:
Surface Transportation Board
Case Control Unit
Washington, DC 20423
Attn: Kenneth Blodgett, STB Docket No. FD 30186 (Sub-No. 3)

SEA's Response to Comment Letter P8
Lee Akers (November 16, 2004)

P8.1 The comments expressed in support of the project are noted.

**ENVIRONMENTAL IMPACT STATEMENT
TONGUE RIVER RAILROAD**

**BY
ANNE MCKINNEY**
406-984-6203

November 17, 2004

I am Anne McKinney and I live with my family at the 4D Ranch in Birney Montana. My Grandchildren are the 6th generation to live on this ranch. We are ranchers raising cattle for beef.

We have fought the railroad for 25 years or more. Our feeling is why take prime agricultural land and make a railroad that will only have (Wyoming) coal. It has taken 25 years to come up with this Western Alignment which isn't a big improvement on the Four mile alignment plus it will cost more. What will be in it for Montana? We would get the higher taxes for the impact of people to build the railroad. The boom and bust mentality. After the railroad is build the jobs will go and we will end up with the clean up job, and of coarse the railroad.

In looking at your environmental Impact statement I see no new problem only an enlargement of the old ones. The start of the Western Alignment is on our land. It dissects our ranch with our summer range on one side and our hay meadows and winter pasture on the other. We are very skeptical if we can operate with this division of land. We are not sure underpasses work and with 14 trains a day it will be hard for cattle to try them

There are a few things from the study that seem to jump out at me. I go by Decker approximately once or twice a week. I never go by there when there isn't a train waiting. There will have to be sidings for 14 trains a day. Where are they going to be and what are their dimensions?

There is Road Relocation, is that included in the acres

1

2

3

4

disturbed ? Or will they be added on to ?

Culverts will not accommodate the water or big drainage. Who determines the size on big drainages like Prairie Dog, Spring Creek and Canyon Creek ? Culverts do not work. They plug up and water goes across the county road. Due to the fire of 1988, whole trees have been known to float down the creek.

5

Construction Camps, do we have a licensed land fill big enough to accommodate this much garbage ?

6

Cultural Values, Our family was usually a close unit. Everyone in Birney were friends and did things together. But now family and friends are divided.

There are a few problems that will solve themselves. Such as water quality. With all of the construction the sediment will be a problem. The quality of the water in time will kill the fish. Then we would have no fisheries.

7

The migratory habits of the wild game (deer and elk) have always been to come to the river in the mornings and evenings to eat the green feed and migrate to the hills to rest in the day time. They will slaughter themselves trying to keep that pattern alive. So there will be no hunting.

8

The air quality and noise pollution and vibration will discourage the birds from migrating here.

9

What about the Native Americans ? We took this land way from then once. Now we threaten to carve into their sacred grounds with a railroad. That would in no way benefit them.

10

It is hard to tell what our future will bring us, but guaranteed we would have a larger weed problem.

11

I think our outfit will support the no-action alternative. We know it will work. "*If it ain't broke, don't fix it*".

12

SEA's Response to Comment Letter P9
Anne McKinney (November 17, 2004)

- P9.1 The railroad would provide transport for Wyoming coal but also Decker area coal and potentially Ashland area coal if those reserves are ever developed. The anticipated economic benefits to Montana are discussed on page 2-5 of the Draft EIS under the subsection, Tax and Employment Benefits. Job opportunities in Montana would not be restricted to the construction period. Assuming that TRRC would operate the railroad, TRRC would use a crew of approximately 50 employees. An additional 49 people would be employed by TRRC to perform administrative and maintenance functions, for a total of 99 jobs. Operation of the Four Mile Creek Alternative would require approximately 11 additional crew members, for a total of approximately 110 jobs. For further discussion of the need for the project, please refer to Master Response 9, Determination of Public Convenience and Necessity.
- P9.2 The commenter is concerned that the project could adversely affect her ability to maintain viable ranch operation and to move cattle between pastures. For a discussion of these issues, please refer to Master Response 18, Land Use Effects of the Project.
- P9.3 The exact location of sidings has not yet been determined by TRRC. However all sidings would be located within the 400-foot right of way analyzed in the SEIS.
- P9.4 Table 4-17, page 4-60 of the Draft SEIS includes the total amount of ROW that would be disturbed during construction – 513 acres for the Western Alignment and 542 acres for the Approved Four Mile Creek Alternative. These estimates include all necessary road relocations.
- P9.5 As stated in recommended Mitigation Measure 49, TRRC would be required to ensure that all culverts and other drainage structures installed at non-perennial stream crossings comply with the design criteria of the American Railway Engineering and Maintenance of Way Association, established in the year 2000. This means that, at a minimum, culverts would be designed to discharge a 25-year flood without static head at entrance and a 100-year flood using the available head at entrance, the head to two feet below base of rail, or the head depth of 1.5 times the culvert diameter/rise, whichever is less. Additionally, TRRC would be required to incorporate the culverts into the existing grade of the streambed to avoid, to the maximum extent possible, changing the character of the streambed. This recommended mitigation measure reflects current industry practices, and its efficacy was confirmed in consultation with Kleinfelder Geotechnical Engineering, Inc.
- P9.6 Rosebud County Landfill will accept construction debris at the rate of \$8/ton and only takes debris from the district of Rosebud. The Rosebud County Landfill accepts 8,000 tons of garbage per year and has a capacity of 100,000 tons.

Currently, there is space at the landfill for approximately 8,000 tons of garbage, and the County Commissioners are taking bids to expand the capacity of the landfill for another 80,000 tons of garbage.⁷

- P9.7 The commenter is concerned that construction of the project would increase sedimentation in the Tongue River, which would have an adverse effect on its water quality and fisheries. For a discussion of this issue, please refer to Master Response 12, Effects of the Project on Erosion and Sedimentation Rates.
- P9.8 It is acknowledged in Section 4.3.2.2 of the Draft SEIS that impacts to wildlife are anticipated due to the location of the ROW relative to the river. Species of wildlife that migrate from upland areas to riparian corridors may be isolated from migratory destinations as a result of the railroad (Tongue River I, Tongue River II, and Tongue River III). But the SEIS includes several recommended mitigation measures intended to reduce this impact including Measures 26 (Data Reconnaissance), 31 (Compensation Program), and 32 (Pronghorn Antelope). In part, these measures would require extensive pre-construction surveys of wildlife habitat to determine appropriate fencing standards, optimal wildlife passage sites, and monitoring of their effectiveness after construction. SEA believes that if these measures are imposed and implemented, impacts to wildlife will be minimized to the maximum extent possible.
- P9.9 SEA's evaluation of potential effects on biological resources included an evaluation of potential impacts to bird species. In particular, SEA conducted extensive study of the project's potential to adversely affect nesting bald eagles in the Tongue River valley, as well as upland game birds, waterfowl and raptors during construction and operation of the rail line (See Sections 4.3.2.2 and 4.3.2.3 of the Draft SEIS). SEA also has proposed Mitigation Measure 91 (Compensation Program) in this Final SEIS, which would require TRRC to implement a compensation program for lost wildlife so that no net decrease in wildlife habitat values would result from the project.
- P9.10 The commenter expresses concerns regarding the effect that the project would have on Native Americans. However, as stated in Section 1.6.3 of the Draft SEIS, SEA conducted consultation with Native Americans in accordance with the regulations implementing Section 106 of the National Historic Preservation Act and attempted to identify and evaluate the potential effects of the rail line on properties of traditional religious and cultural significance to Native Americans in Tongue River I, Tongue River II, and again in Tongue River III. SEA's activities have primarily focused on consultation with the Northern Cheyenne and Crow tribes, but have also included consultation with other tribes. SEA's consultation and evaluation was designed to determine if the construction and operation of the rail line would result in any significant impacts on social, economic, or cultural

⁷ Personal Communication. Charlie Brown. Rosebud County Landfill, August 18, 2005.

resources, particularly traditional and sacred sites. SEA's outreach efforts have included phone calls and letters directed to members of the Northern Cheyenne Tribe, Arapaho Business Council, Crow Tribal Council, Shoshone Business Council, Oglala Sioux Tribal Council, and Standing Rock Sioux Tribal Council. SEA has also consulted with tribes in the development of a Programmatic Agreement, which establishes the procedures for further identification and treatment of cultural resource that may be affected by construction and operation of the rail line.

P9.11 The commenter contends that project would result in a greater noxious weed problem. But recommended Mitigation Measure 21 is specifically intended to prevent the spread of noxious weeds during and after construction. Regarding enforcement and monitoring of mitigation measures, please refer to Master Response 7, Enforcement of Mitigation Measures.

P9.12 Comment noted.

P10

EI#1124

Stephen & Christine Valentine
P.O. Box 547
Birney, MT. 69012

Kenneth Blodgett
Surface Transportation Board
Case Control Unit
Washington, DC. 20423

November 21, 2004

Dear Mr. Blodgett –

Please find attached 3 copies of the comments that I presented at the Ashland Hearing re: the Tongue River Railroad on November 17, 2004.

Once more thank you very much for holding a meeting in our area. It was appreciated.

Yours sincerely,



Stephen Valentine



Christine Valentine

CV/cv
cc: file

**Stephen and Christine Valentine
Box 547
Birney, MT. 59012**

To: Surface Transportation Board
Case Control Unit
Washington, DC. 20423
STB Docket No FD 30186 (Sub-No.3)

COMMENTS ON DRAFT SUPPLEMENTAL
ENVIRONMENTAL IMPACT STATEMENT
TONGUE RIVER III

I-- OVERALL CONCERNS:

- | | |
|---|--------------------------------|
| a) The DSEIS has been constructed over a period of time and in separate stages. The final route is not yet decided. Data used are from other studies and not new or pertinent to the whole route of the TRRR. | 1 |
| b) With the advent of Coal Bed Methane development in the proposed area new studies are needed to determine the effects of both the TRRR/ Mining and CBM simultaneously. | 2 |
| c) The DSEIS does not establish any precedent for railroad development when the mines to be served already have existing transportation available. Fig 2-1 No new mining permits have been issued for the area to be served by TRRR in Montana. | 3 |
| d) The railroad is slated to serve the Decker mine, which is due to exhaust its supply of coal within the next 10 years. | 4 |
| e) The DSEIS plans for coalmines in the Otter Creek area at the beginning of the study but supplies no data on the impact of the mines and Railroad in the Otter Creek area throughout the rest of the Impact Statement. | 5 |
| f) 4 -162 Employment estimates the losses and gains to employment in the area. No mention is made of the economic impact of the movement of those jobs to other areas; i.e. tax losses to the towns of Forsyth and Miles City and loss of trade to the stores in those same towns when a large number of families exit to employment in other towns.
*NO MENTION IS MADE OF THE LOSS OF JOBS IN WYOMING DUE TO SHIFTING THE ROUTE OF TRANSPORTATION.
** NO MENTION IS MADE OF THE IMPACT OF THE RAILROAD ON THE EXISTING MINES AT COLSTRIP WHICH WILL UNDOUBTEDLY BE IMPACTED | 6

7 |
| g) Water needed for construction is to be taken from the Tongue River reservoir and the Tongue River. Given the extent of the drought of the last 5 years it would stretch resources far too much and endanger water reserved for agricultural purposes. Back-up plans cite the Northern Cheyenne water agreement however if the water is just not available, this plan is useless. | 8 |

- | | |
|--|---|
| h) Landowners have yet to be approached by the TRRR Co regarding waivers for construction. The TRRR Co has no permits to build, by the time these are obtained a new EIS will be needed. | 9 |
|--|---|

2 – SPECIFIC CONCERNS:

- | | |
|--|----|
| a) 2-3 This project is being “billed” as being needed by Montana, however fully half the trains will carry Wyoming coal from the Gillette area which is already served by an existing railroad. Who stands to gain from moving Wyoming coal through Montana? Mostly it will be Coal Brokers who can reap higher profits per ton. You can be sure the price of coal at the end of the route (Minnesota) will not reflect the saving from the new routing! | 10 |
| b) The study does not seem concerned with the amount of sediment/erosion taking place during the construction phase. The climate is such that we have drought, often followed by violent thunderstorms with heavy rain, giving rise to “gully washers.” The impact of soil erosion from construction sites being carried into the Tongue during these storms, may be to create banks of soil in the river bed changing the flow and quality of water. | 11 |
| c) Eagle habitat 4 -10 is widely discussed in the study but only in terms of disturbing nesting sites on or near the proposed alignment. Eagles have a very wide flight path up and down the Tongue River and this should be considered as a whole rather than piecemeal. There were Bald Eagles nesting in this area when they were on the endangered species list. The Tongue River eagles helped to re-populate the species as a whole and that should not be underestimated, we still need to preserve Eagle habitat as far as is possible. <u>NO mention is made of the Golden Eagle population in this area.</u> | 12 |
| d) 4-3 What does the study mean when it cites that hunting access “will be almost fully restored”? How much access will be lost to hunters? This needs to be more fully explained. | 13 |
| e) 4-3 Biological Resources were poorly assessed throughout the study – helicopter studies alone are not enough to assess the habitats in this area, The SDEIS states that further studies will be done prior to construction. ALL DATA needs to be collected and fully assessed BEFORE any permission is given to construct the railroad. The TRRR Co is made the responsible party for these new studies – we need a completely unbiased agency to perform these studies. | 14 |
| f) 4-3 Wildlife studies make little mention of the PELICAN population in the Tongue River during the summer months. Originally confined to the reservoir, the pelican flocks are observed feeding in the river for the last fifteen years, as far as the Birney town-site and possibly further north. | 15 |

g) The site of the Battle of Wolf Mountain does not receive enough attention in the study. A National Historic site, the last study conducted by Jeffrey Pearson states that the site: “spans the width of the Tongue River for approximately two and one half miles, and extends along the axis of the River about two miles” We simply do not understand how the DSEIS can claim that the battlefield will not be affected by construction, especially considering access roads for equipment.	16
h) The study makes no mention of any displacement of land due to access roads for heavy equipment. Construction of the railroad will not occur in a vacuum.	17
i) 4-162 Employment is seen as a positive for the area, however no mention is made of support services such as those of Police. These will have to be provided from the taxpayer base. The construction phases of Colstrip I&II brought with it an increase in use/ and sale of drugs to the area and more police were needed.	18

RECOMMENDATIONS:

A more inclusive EIS should be undertaken <u>only after</u> the TRRR Co has all the permits necessary to building the TRRR and should include the whole of the route planned – Decker to Miles City. The new study should be more sensitive to the Site of the Battle of Wolf Mountain and its environs. <u>It should be performed by an agency that does not stand to benefit financially from building the railroad.</u>	19
The new EIS MUST include Coal Bed Methane Development plans for the area TOGETHER with the proposed entire routing and the combined effects of both industries on the Tongue River Valley.	20
If mining is planned for the Otter Creek tracts then the impact of branch lines into that area needs to be included.	21
A more extensive exploration of the effects of shifting employment patterns for railroad workers and their families is essential to a further study.	22
New EIS must answer the questions:	
1.Where will water for the construction phase be obtained if the reservoir and Tongue River maintain the same drought status as the last five years? There is simply not enough to service all parties that need water from the river.	23
2.How will the Tongue River be affected by erosions from construction sites in violent storms and flooding?	24
3.How will aquatic life and farming be affected by the levels of soil erosion in the water planned by the TRRR Co?	25

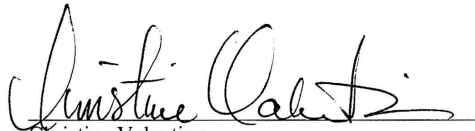
4. How will employment and coal production in the mining operations at Colstrip be affected by TRRR?

26

Respectfully submitted by:



Stephen Valentine III



Christine Valentine

11/17/04

4

SEA's Response to Comment Letter P10
Stephen and Christine Valentine (November 16, 2004)

- P10.1 For a discussion of the validity of the information used in preparing the Draft SEIS, please refer to Master Response 4, Information Used in Preparing the EIS.
- P10.2 The comment raises concerns related to potential cumulative impacts that could occur as a result of CBM development in combination with the proposed project, and possibly new mines in the project area. For a discussion of these issues, please refer to Master Response 21, Adequacy of Cumulative Analysis.
- P10.3 The comment questions the necessity of the project on the basis that there are existing rail lines that serve the existing mines in this region. For a discussion of project need, please refer to Master Response 9, Determination of Public Convenience and Necessity.
- P10.4 The railroad would directly serve the Decker area mines; however it would also provide service for coal being transported from the Gillette, Wyoming area to mid-western users and mines that may be developed in the Ashland area in the future.
- P10.5 Potential development of the Otter Creek tracts is discussed in Section 6.4.3 of the Draft SEIS. SEA maintains that coal mine development in the Ashland/Birney/Otter Creek area is likely to occur and the potential for such development is likely to increase with improvements to the transportation system (i.e., the Tongue River Railroad). If such development were to occur concurrently with the Tongue River railroad project, it would be reasonable to consider it as part of the cumulative analysis. However, as discussed in Section 6.4.3 of the Draft SEIS, SEA concludes that there has been no discernible change of social, economic, or environmental factors since the analysis in Tongue River II to significantly increase or decrease the potential for mine development as a result of construction of either the Four Mile Creek Alternative or the proposed Western Alignment. Further, SEA concludes that there are no material changes that warrant an assumption of increased coal production generally or increased coal production in the Ashland/Birney/Otter Creek area beyond what was analyzed in Tongue River II.

Lastly, SEA consulted again with MT DNRC in August 2005 to obtain the most current information on any leasing applications or agreements associated with the Otter Creek tracts. Based on 2004 test borings, MT DNRC compiled up to date information on the volumes and properties of coal in the Otter Creek tracts. While the 2004 borings have confirmed large coal reserves in these areas and the State Governor supports development of these tracts, possibly with mining operations, there are currently no proposals under review for leasing of the tracts nor has any industry group identified a time line for submitting such a proposal.

P10.6 Tables 4-40 through 4-42 of the Draft SEIS show the anticipated construction period employment and annual construction wages (for the three year construction period). These jobs are in addition to existing jobs in the area. Local annual construction wages for Forsyth are estimated to be over \$ 1 million for either the proposed Western Alignment or the Four Mile Creek Alternative. The annual wages in Miles City are estimated to be over \$ 3 million for either alignment. Taxes on these wages would increase the tax base in Forsyth and Miles City during construction of the rail line.

Table 4-46 provides an estimate of the permanent new jobs that would be created during the first year of rail operations, which includes a small number of employees (8) in the Ashland area.

P10.7 The project is not expected to impact the existing mines at Colstrip. Those mines could continue operations concurrently with the Tongue River project and the existing BNSF rail lines that serve the Colstrip mines would remain operational.

P10.8 The commenter is concerned that an adequate water supply does not exist to allow for construction of this project. For a discussion of this issue, please refer to Master Response 19, Availability of Water During Construction.

P10.9 Assuming that TRRC decides to exercise its Section 10901 authority to construct and operate a rail line, landowners will be approached by TRRC concerning acquisition of property needed for railroad right-of-way following a final decision of Tongue River III, a final determination on which alternative will be built, and where the alignment will be positioned within the 400-foot ROW corridor (200 feet from either side of the railroad centerline).

P10.10 The purpose of TRRC's entire rail line from Miles City to Decker is to provide for the transport of coal from existing and future mines to markets in the midwestern and northeastern states. This includes coal from mines in the Gillette, Wyoming area; however it also includes coal from several existing and possible future mines in Montana. Therefore, both Wyoming and Montana stand to benefit from this project. The anticipated economic benefits to Montana are discussed on page 2-5 of the Draft SEIS under the subsection entitled Tax and Employment Benefits.

P10.11 The commenter is concerned that erosion associated with project construction would adversely affect water quality and change the water flow patterns in the Tongue River. For a discussion of these issues, please refer to Master Response 12, Effects of the Project on Erosion and Sedimentation Rates.

P10.12 The comment raises several concerns related to the potential for the bald eagle to exist in the project area and to be adversely affected by the project. The comment also questions why the Draft SEIS did not include mention of the Golden Eagle

population in the project area.

The Biological Assessment (BA), included as Appendix L in Volume II of the Draft SEIS states that bald eagles can occur in the project area in nesting, wintering, and migrant populations. Discussion of the importance of Tongue River to winter/migrant populations is found in the BA. Survey data of wintering individuals are included, as well as a commitment to conduct pre-construction surveys of these populations. A revised BA and the Biological Opinion issued by the USFWS in July 2006 are included in this Final SEIS as Appendix D.

For the SEIS, nests are used as an indicator of the potential for direct impacts associated with the project. The potential for indirect impacts is also acknowledged. Preservation of bald eagle habitat has been a major priority of the Tongue River Railroad planning process. Implementation of mitigation measures included in this Final SEIS (Mitigation Measures 14, 18, and 22 through 29), and implementation of the Biological Opinion issued by USFWS included in Appendix D of this Final SEIS would reduce any potential impacts to the species to the maximum extent possible.

Regarding the golden eagle, page 4-19 of the Draft SEIS mentions the existence of this species in the Tongue River area. Recommended Mitigation Measure 26 (Data Reconnaissance) would require that aerial and ground surveys be conducted to determine the location of certain habitat areas and nesting sites. Recommended Mitigation Measure 25 requires that surveys for active golden eagle and other raptor nests would be performed prior to the construction of any rail segments. The survey results will be used to develop appropriate mitigation measures, as needed, for approval by the multi agency Task Force in accordance with the process set forth in recommended Mitigation Measure 14.

P10.13 The comment calls for clarification regarding the amount of recreational hunting access that would be restored following project completion. Full access would be restored following construction except for the areas within the railroad ROW. The ROW would be restricted to TRRC personnel only for purposes of safety and security. The ROW would extend approximately 200-feet from either side of the railroad centerline. Access gates would be provided to landowners at private grade crossings. It would be up to the individual landowners to determine who may utilize the crossings.

P10.14 The comment expresses concern as to the adequacy of the biological resource studies that have been completed as part of the Draft SEIS. For a discussion of the methodologies followed by SEA in conducting these studies, please refer to Master Response 1, Adequacy and Timing of Studies, and Master Response 2, Biological Resources - Conclusions and Mitigation. While TRRC would be responsible for conducting many of the supplemental studies required by the

mitigation measures, SEA has included Mitigation Measure 14 (Task Force) which would establish a Multi-Agency/Railroad Task Force for the express purpose of providing an independent review of the implementation and monitoring of biological mitigation measures.

P10.15 According to the Montana Natural Heritage Program and the Montana Bird Distribution Database, the American white pelican is a state species of concern with a state rank of S3B. The American white pelican occurs as a transient or migrant within an area that extends north of Birney, Montana and includes the project area for the proposed Western Alignment and the Four Mile Creek Alternative.

The description of the American white pelican has been modified as follows; see Errata (Chapter 5: where it references page 4-16, lines 5-9):

American White Pelican (*Pelecanus erythrorhynchos*), S3. The American white pelican is a migratory bird that travels extensively. Breeding colonies are found within the state of Montana, however, within the project area the American white pelican is considered a transient or migrant (MT NHP 2005). It uses a variety of aquatic habitat types for foraging. It is found on rivers, streams, lakes, ponds, and marshes, typical of the Tongue River Reservoir and Tongue River. Its breeding habitat is restricted to flat, barren, earthen islands. Nesting colonies are usually in areas unobstructed by vertical structures.

P10.16 The commenter expresses concern that the Draft SEIS does not adequately cover the potential for impacts to the Battle of Wolf Mountain historical site. For a discussion of this issue, please refer to Master Response 14, Effect of the Project on the Battle Butte Battlefield (now called the Wolf Mountains Battlefield). Regarding potential effects to the site caused by the construction and use of temporary access roads, a temporary access road would be constructed within the ROW to minimize the use of local roads during construction.

P10.17 As stated in recommended Mitigation Measure 54, access roads would be confined, to the extent possible, to the areas within the right-of-way. The analysis of the project's effect on land use therefore assumed that all land within the ROW would be removed from non-railroad use. SEA's recommended Mitigation Measure 54 further provides that should roads outside the ROW be required for access, TRRC would ensure that contractors make necessary arrangements with landowners or affected agencies to gain access from private or public roadways. The access road would be used only during construction of the railroad grade, after which construction shall be confined to the ROW.

P10.18 It is not expected that additional police personnel would be needed as a result of construction or operation of the project. If there is an increase in crime during construction that warrants an increase in police personnel, the increases in tax

revenue (from wages and business taxes) that are expected to result from the project would off-set associated costs.

P10.19 The first part of the comment requests that a more inclusive EIS be prepared. For a discussion of this issue, please refer to Master Response 16, The Need for a New EIS. The second part of the comment states that this new analysis should be more sensitive to the Wolf Mountain site and the surrounding area. For a discussion of the potential impacts on the Wolf Mountains Battlefield site, please refer to Master Response 14, Effect of the Project on the Battle Butte Battlefield. SEA prepared this EIS and will not benefit financially if the railroad is built.

P10.20 The comment indicates that the SEIS should include an analysis of CBM development plans in combination with the proposed rail line. In fact the Draft SEIS did include such an analysis in Chapter 6. In addition, SEA has updated the analysis of potential cumulative impacts in this Final SEIS, including an update regarding CBM development in combination with the rail line. See Master Response 21, Adequacy of Cumulative Analysis.

P10.21 The issues raised in this comment were previously raised in comment 5 of this letter. Please refer to the response to comment 5 and Master Response 21, Adequacy of Cumulative Analysis for additional information.

P10.22 The commenter calls for a more extensive analysis of the potential effects on the population due to shifting employment patterns.

SEA acknowledges that construction and operation of the project could result in changes to regional employment patterns. Information related to employment, wages, and the effects that these factors could have on the population is presented in Section 4.3.9.2 of the Draft SEIS. The following is a list of some of the key information and conclusions provided in the discussion.

- It is estimated that that approximately 50 percent of the labor pool required to construct the rail line would be local and would commute from their homes each day;
- Table 4-41 provides estimates on labor pool contributions from specific communities in the five county region;
- Table 4-42 shows the estimated distribution of local annual construction wages among communities;
- The influx of a large number of non-local workers could create some economic dislocations, such as the temporary shortage of goods and services in local communities; however, non-local construction workers are unlikely to alter the local economy markedly, due to their residence in the self-contained construction centers.
- The increased demand for local labor could create a short-term reduction in the ranchers' labor pool. Not only could the availability of labor be reduced, but the cost of obtaining labor could increase because ranchers

might be forced to pay higher wages to compete with the wages offered by the railroad-construction companies.

While some workers and families would benefit, others would not. As stated in the Draft SEIS, some workers and families would experience an increase in income; however, others likely would experience a shortage of a labor pool and an increase in wages. These effects would vary from person to person and family to family.

Overall, as stated in the Draft SEIS, SEA concludes that, with mitigation, the construction and operation of the entire rail line from Miles City to Decker via the proposed Western Alignment, like the approved Four Mile Creek Alternative, would not result in significant adverse impacts on socioeconomics. SEA also concludes that construction and operation of the entire rail line from Miles City to Decker via either the proposed Western Alignment or the approved Four Mile Creek Alternative could provide some socioeconomic benefits to the area.

P10.23 The issue of water supply during construction was previously raised in comment 8 of this letter. Please refer to that comment and response for additional information.

P10.24 The issue of erosion during storm events was previously raised in comment 8 of this letter. Please refer to that comment and response for additional information.

P10.25 The commenter is concerned that increased sedimentation in the Tongue River will affect fisheries and agricultural operations, which extract water from the Tongue River for irrigation. For a discussion of these issues, please refer to Master Response 12, Effects of the Project on Erosion and Sedimentation Rates.

P10.26 The project is not expected to impact the existing mining operations at Colstrip. Those mines could continue operations concurrently with the Tongue River Railroad project and the existing BNSF rail lines that serve the Colstrip mines would remain operational.

520 S. 8th Apt. A
Bozeman, MT 59715

November 12, 2004

Surface Transportation Board
Case Control Unit
Washington, D.C. 20423

RE: STB Docket No. FD 30186 (Sub-No 3)

Sir/Madam:

This is to express opposition to the Tongue River Railroad. The combination of the railroad plus coal bed methane drilling will virtually turn this fragile and beautiful area of Montana into an industrial zone, yet the railroad would not benefit Montana itself. It would benefit Midwestern utilities. It would also give the Gillette, Wyoming, coal area an economic advantage over Colstrip, Montana, by making the Colstrip-Midwest route longer than the Gillette-Midwest route. Don't wreck Montana for the benefit of the Midwest or Wyoming!

1

Furthermore, there has been no recent and comprehensive EIS that takes the impact of both activities – railroad and CMD – along the entire proposed route into account. Piecemeal studies from years past and from only parts of the route are not good enough. The impact of the proposed railroad on all pertinent land, on all wildlife and aquatic life, and on water and air quality needs to be thoroughly studied.

2

Having grown up on a Montana cattle ranch I can attest to the fact that the railroad would not only hurt the Montana coal industry economically, it would also hurt the all-important local agriculture by lowering property values and making it more difficult to graze and water livestock.

3

The Miles City-Decker railroad has had the go-ahead since 1996, but no real progress has been made. The Tongue River Railroad Company has done nothing but market their scheme and worry farmers and ranchers about their economic future and their way of life. This surely indicates that this railroad is not important and necessary after all, and that the existing railroads are serving the area adequately.

4

Sincerely,

Judy Staig Miller

Judy Staig Miller

SEA's Response to Comment Letter P11
Judy Staigmiller (November 12, 2004)

P11.1 The commenter is concerned that the project would adversely affect Montana while serving to economically benefit Wyoming and the Midwest by providing a shorter route for transporting Wyoming coal to Midwestern markets. The comment is related to the project's purpose and need, which is discussed in Master Response 9, Determination of Public Convenience and Necessity.

P11.2. The commenter raises two concerns. First, the commenter states that the Draft SEIS does not account for the potential cumulative impacts along the entire route that could occur as a result of CBM development in combination with the proposed project. Second, the commenter contends that impacts on land use, biological resources, water quality, and air quality have not been adequately analyzed because the corridor has been divided between Tongue River I, Tongue River II, and Tongue River III.

Regarding cumulative effects of CBM development, Chapter 6 of the Draft SEIS provided a comprehensive evaluation of potential cumulative effects of the construction and operation of the rail line in combination with CBM development within the Tongue River watershed based on the BLM's Statewide Oil and Gas FEIS released in January 2003. SEA has updated the cumulative analysis of CBM development within the Tongue River watershed; please refer to Master Response 21, Adequacy of Cumulative Analysis.

For a discussion of the adequacy of the analysis provided in the Draft SEIS, please refer to Master Response 8, Scope of the EIS is too Narrow, and Master Response 16, The Need for a New EIS.

P11.3 The commenter is concerned that the project would adversely affect the Montana coal industry. The comment also expresses concern that the project would impact the agricultural sector of the regional economy by reducing property values and making it more difficult to manage livestock.

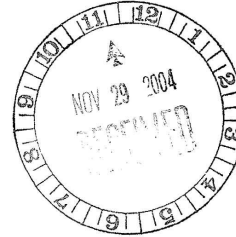
In regards to the project's potential effect on the Montana coal industry, see Master Response 11, Loss of Competitive Advantage Held by Montana Coal. In regards to a potential reduction in property values, please refer to Master Response 18, Land Use Effects of the Project. Lastly, potential impacts related to livestock management (grazing) are addressed through recommended Mitigation Measure 3. This measure would require that TRRC install cattle passes (oval, corrugated metal structures, approximately 11 feet high and 12 feet wide at the base) along the railroad right-of-way to ensure passage of cattle under the rail line. TRRC would work with landowners to identify appropriate locations for cattle passes and private grade crossings for equipment.

P11.4 The commenter suggests that there is no need for the proposed project. For a discussion of this issue, please refer to Master Response 9, Determination of Public Convenience and Necessity.

P12

November 18, 2004

Surface Transportation Board
Case Control Unit
Washington, D.C. 20423
STB Docket No. FD 30186 (Sub-No.3)



Dear Sir,

I am opposed to the Tongue River Railroad for the following reasons.

The railroad has been studied in a piecemeal fashion, with no look at impacts of the project as a whole on the Tongue River and people who make their home in the valley. This directly violates the National Environmental Policy Act's mandate that agencies examine cumulative impacts of an entire project. | 1

The EIS doesn't address the fact that coal bed methane development, coupled with a coal hauling railroad, and a 750 megawatt power plant and coal mine would turn the Tongue River Valley into and industrialized zone. Such an impact would make it difficult for hundreds of farmers and ranchers in the area to continue to make a living off the land. | 2

The project negatively impacts:

- water ways
- property values
- wildlife
- wells and springs
- water quality
- air quality.

| 3

Finally, this railroad is not necessary. Coal is currently being transported by rail from Coalstrip and Gillette to the Midwest. The Ashland, Montana coal that supposedly would be hauled by the Tongue River Railroad lies under an 80 foot overburden, which makes it economically impractical for development. | 4

Sincerely,

Stan Taylor
PO Box 1367
Miles City, Montana 59301

1-406-234-0062

SEA's Response to Comment Letter P12
Stan Taylor (November 18, 2004)

- P12.1. The commenter expresses concern that the project has been analyzed in several separate environmental documents versus one EIS that covers the entire route from Miles City to Decker. For a discussion of this issue, please refer to Master Response 16, the Need for a New EIS. The commenter also suggests that the Draft SEIS has not adequately analyzed the potential cumulative impacts associated with the project. The Draft SEIS included an analysis of cumulative effects in Chapter 6, which also included an update of the cumulative analysis conducted in Tongue River II. Master Response 21, Adequacy of Cumulative Analysis, also provides additional information and an update regarding the cumulative analysis conducted by SEA.
- P12.2 The commenter is concerned that the Draft SEIS did not adequately analyze the potential cumulative impacts associated with CBM development in the Tongue River Valley region and the effects that such impacts could have on agricultural and ranching operations. In fact, Chapter 6 of the Draft SEIS included an extensive analysis of the potential cumulative effects of CBM development in combination with the construction and operation of the Tongue River Railroad. Master Response 21, Adequacy of Cumulative Analysis, also provides additional information and an update regarding the potential cumulative effects of CBM development in combination with construction and operation of the Tongue River Railroad. Section 6.5.1 of the Draft SEIS addresses the most current status of power plants in the project vicinity. Updated information on Section 6.5.1 is provided in Chapter 5 (Errata: where it references Page 6-7, line 46) of this Final SEIS.
- P12.3 Comment noted. The Draft SEIS included extensive analysis of the topics listed in the comment. SEA's analysis showed that significant impacts could occur in each of these areas and in response included proposed mitigation measures to avoid and/or reduce these potential impacts. Some of these mitigation measures have been revised and improved in response to comments on the Draft SEIS. Chapter 4 of this Final SEIS contains a complete list of SEA's final recommended mitigation measures for construction and operation of the entire rail line from Miles City to Decker, Montana.
- P12.4 The commenter suggests that the project is not necessary because there are rail lines that already serve mines in Montana and Wyoming. For a discussion of project need, please refer to Master Response 9, Determination of Public Convenience and Necessity.

November 26, 2004

Surface Transportation Board
Case Control Unit
Washington, D.C. 20423

Attn: Kenneth Blodgett

I am writing to voice my opposition to the Tongue River Railroad. This railroad is not necessary.

1

I am 84 years old. The Tongue River has been a big part of my life. First as a rancher-wife, and the last few years I've enjoyed my summer home on the river. The wildlife and many birds are plentiful and so enjoyable.

The impact of the Western Alignment would do more harm than good. The emissions from a train can only harm our wildlife and birds and people like me. I'm very much against this.

2

Sincerely,

Berniece Musgrave

**SEA's Response to Comment Letter P13
Berniece Musgrave (November 26, 2004)**

- P13.1 The commenter opines that the proposed project is not necessary. For a discussion of project need, please refer to Master Response 9, Determination of Public Convenience and Necessity.
- P13.2 Comment noted. Section 4.3.7 of the Draft SEIS provides a detailed analysis of the potential air quality effects of the project. The Draft SEIS identifies that construction activities would result in fugitive dust emissions and in response, SEA developed several mitigation measures (Measures 69 through 73) to reduce construction-period impacts. Air pollutant emissions resulting from the operation of the rail line were also fully analyzed in the Draft SEIS and found to be below the EPA's project significance thresholds. As a result, SEA is not recommending any air quality mitigation measures for the operation period.

December 14, 2004

Dick Hosford & Laurie Oakland
Game Ranch Manager & Lodge Manager

The Lodge At Diamond Cross, LLC
29 Diamond Cross Ranch Lane
Birney, MT 59012

Surface Transportation Board
Case Control Unit
Washington, DC 20423
Attn: Kenneth Blodgett
STB Docket No. FD 30186 (Sub-No. 3)

Re: Dick Hosford's Comments on STB's Tongue River III DSEIS

Dear Mr. Blodgett:

Thank you for the opportunity to review and provide comments to the Draft Supplemental Environmental Impact Statement (SEIS) concerning the construction and operation of the proposed Tongue River Railroad - Western Alignment.

We are game ranch, hunting and recreational lodge managers with property affected by the proposed Tongue River Railroad. I have lived in the area all my life and rely on the ranch for the Big Game hunting business for my family's continued livelihood. The natural resources, the protection of the environment and the future of our well being are contingent upon the Tongue River Valley being protected in every way that it can. We believe that the Proposed Actions as described in this DSEIS will have a negative impact on all these areas.

We have great concerns about the effects that the Proposed Western Alignment described in the Tongue River III Draft Supplemental Environmental Impact Statement (DSEIS) and the proposed realignment to the Tongue River I and Tongue River II projects will have on the environment of the Tongue River Basin and the related communities including this game ranch.

This letter serves as an expression of my concern both about Tongue River III and the sufficiency of the DSEIS in reviewing all relevant matters, including the re-opening of only portions of Tongue River I and II. It is hard to understand how the Board can rely on EIS' that are nearly 10 and 20 years old respectively. We don't believe that the mitigation measures listed

1

by the Board include any enforcement to ensure that the railroad will adequately take our fears and concerns seriously and ensure that they do what the Board recommends.

1 cont.

We respectfully urge the Board to actions immediately to ensure that a new environmental analysis of the entire line is completed before any action is taken by the Board and to urge that the Board include mitigation measures that are enforceable to the letter of the law. We do not believe it is responsible to allow the railroad to begin construction until the community has had an opportunity to review and comment on all the actions to protect our home and our environment, and the railroad presents to the community a comprehensive plan for both.

2

I. THE PROPOSED ACTION DOES NOT PRESERVE THE ENVIRONMENTAL INTEGRITY OF THE TONGUE RIVER AND THE TONGUE RIVER RESERVOIR.

We rely on the water of the Tongue River and Tongue River Reservoir for irrigation and other uses, including that of the health and well being of our livestock and the well being of the game animals that rely on use of the river. The proposed action by the Board will dramatically increase sedimentation in the river as a result of the Western Alignment and will impair the water used by our business and relied upon by our game animals. The new route would increase the number of non-perennial stream crossings, nearly double the volume of earth moved (by seven million cubic yards) and double the potential increase in sediment load (tons/year) in the Tongue River. DSEIS xxi.

3

The State of Montana, recognizing the present water quality problems of the Tongue River, has assigned TMDLs to prevent further deterioration of water quality and to improve the hydrology of the Basin. Despite the recognition that the Tongue River watershed needs improvement, the SEA recommends approval of a project that it concludes would “increase[] sediment loads and suspended solids due to (1) active construction in waterways during installation of bridges and culverts; (2) changes in surface water patterns and shallow aquifer flow patterns due to topographic and drainage-pattern changes (e.g. cut and fill and the crossing of drainages); and (3) the temporary effects of water consumption for dust suppression.” DSEIS 4-108.

4

The Western Alignment would clearly threaten the Tongue River. The SEA concedes that the Proposed Action would increase sedimentation, increase the potential for toxic spills, and cause slumping on the canyon walls. DSEIS 4-99, 4-105 – 4-108. By choosing the Proposed Action, which travels along the Tongue River, the STB has endangered the river. The DSEIS suggests that the construction of the Western Alignment will require substantially more water use during the peak irrigation season (a season during which the River already has a low water level) than the alternative actions. DSEIS 4-115. While the SEA concludes that this will not affect

5

water availability, the DSEIS does not contemplate the change in water quality during this period nor does it provide any site-specific analysis as to flow levels at various points along the river. Likewise, the DSEIS does not address how increased sedimentation and low water levels would affect wildlife and game animals. In fact, while the SEA acknowledges that the Western Alignment crosses more non-perennial streams than other alternatives it provides no analysis as to how the project will affect those streams. DSEIS 4-28. Before approving the Proposed Action, we respectfully request that the Board require a site-specific survey of the impacts of the proposed Western Alignment on the feeder non-perennial, ephemeral and intermittent streams it will cross and the subsequent effects on wildlife and game animals.

5 cont.

We are also concerned that the DSEIS does not adequately evaluate the changes in the water quality and drainage in the Tongue River Basin since the Tongue River I and II EISs were completed. It appears that the extent of the analysis is a notation that the new alignment will be further from the river and thus “the proposed Tongue River I and Tongue River II alignment would not affect the normal variations in stream flows that occur in the Tongue River Valley and that no mitigation is required to address variations in streamflows.” DSEIS 5-15. The effects of site-specific location changes in alignment should be evaluated before approval – while distance on a map may appear to indicate less of an impact, this is not necessarily indicative of the change’s impact to the Tongue River. Site-specific hydrology corresponding with the changes in the alignment must be addressed. Before approving the Proposed Action, we respectfully request that the Board require a site-specific survey of the impacts of the entire Tongue River Railroad project on the Tongue River and Reservoir.

6

The DSEIS assumes away many of the potential harms, which are not quantified or specified, by offering mitigation measures to protect the river. It is hard to understand how the DSEIS can make such assumptions, based on little to no quantitative research. It is also hard to understand how the Board can be assured these mitigation measures will ensure that the railroad will ensure the safe conduct of the environment and our lands when these mitigation measures have no enforcement mechanisms included in them. It is also hard to understand how the SEA assumes that the mitigation measures will be effective without specifying how they will be effective. The language of the Mitigation Measures is clearly unenforceable in it’s current state. Mitigation Measure 49 is described as a mechanism to protect non-perennial streams at railroad crossings by the installation of culverts. SEA states “if imposed and implemented, this mitigation measure would ensure that the impacts resulting from the construction of culverts... would not be significant.” DSEIS 4-114. Not only is there no analysis as to how this would be effective, the plain text indicates that implementation and enforcement is questionable.

7

While cognizant of the many mitigation measures that the SEA lists in the DSEIS, we are concerned that no mechanism to enforce the mitigation measures exists. Even if enforced, there

8

is little discussion in the DSEIS of the efficacy of the mitigation measures with respect to the ensuring that the River remains clean. Without more research, data and analysis on the impact of the Western Alignment to Tongue River Basin, or on the efficacy and impact of the mitigation measures it appears inappropriate to approve the Proposed Action. Before approving the Proposed Action, we request that the Board require analysis which quantifies and specifies the site-specific environmental damage to the river, and describes the enforcement mechanism for the various mitigation measures and how those mitigation measures will work given the specific hydrology of the Tongue River Basin.

8 cont.

II. NEGATIVE IMPACTS ON OUR LIVELIHOOD AND THE SAFETY OF OUR COMMUNITY

As a resident of the Tongue River Basin for 49 years and as someone who is dependent on the lodge for our economic well being, we are very concerned about the effects of the Railroad. Our business provides huge economic potential to the greater community by bringing in larger numbers of tourists than ever before. This helps with downstream positive economic impact that had not existed before and will be hurt by the railroad operations in a number of ways.

9

As a gaming lodge, our business relies on the health and well being of big game animals, many of which will be hurt or killed by the railroad. We also rely on the broader environment in which these animals live which would be negatively affected by the Proposed Action. The loss of any of our wildlife means a loss of tens of thousands of dollars to our lodge, which could ultimately bankrupt our business. The deer population has been managed on this game ranch for over 30 years, and has proven to provide a healthy environment for which the deer can flourish. Again, there is apparently no recourse for landowners if the railroad decides against building a wildlife passes over the railroad for the wild animals that we rely on to run our business. Before approving the Proposed Action, we respectfully request that the Board require an analysis of the effect of severing wildlife habitat, and include enforcement mechanisms and official recourse for us if the railroad does not undertake the actions requested by the Board.

10

We are very concerned that the SEA's analysis of the economic effect was unbalanced in its review. While the DSEIS provides a thorough analysis of how building the railroad will benefit the railroad company and increase employment in Sheridan, Wyoming, it is absolutely lacking in any analysis of the negative economic effects on people like me who live and work in this community. We respectfully request that the Board do an in-depth analysis on what the economic harm will be to the landowners like myself before it is concluded that the railroad will be a boon to our area.

11

SAFETY CONCERNS:

Wildfires are a tremendous concern both for the sake of our land, as well as for the area wildlife. Railroad lines, as the SEA acknowledges, spread noxious weeds to the lands they cross and are more likely to start wildfires along their path. DSEIS 4-65. The State of Montana Water Resource Division has also noted their concern for this issue in their filing as well. STB Docket No. FD 30186 (Sub-No.3) November 30, 2004 filing. The DSEIS addresses the wildfire issue by describing potential mitigation measures but does not quantify the risk of wildfires, which we understand to be great. In fact, the SEA only provides percentage risks of fires compared to other sources of fire, but does not provide the needed analysis for accurate public evaluation – how many fires can the Tongue River Basin expect as a result of the Proposed Action? DSEIS 4-65. The SEA suggests that the average railroad fire consumes 90 acres as if this were not a significant risk. *Id.* A 90-acre burn can be a tremendous loss to habitat and is an extreme danger to game animals. The DSEIS fails to evaluate whether local conditions suggest larger or smaller fires or whether the 90-acre size is appropriate for the Basin. Before approving the Proposed Action, we respectfully request that the Board require an analysis of the actual likelihood of fire and noxious weeds by this railroad in this canyon and to require an explanation of how the mitigation measures will actually prevent fire and the spread of noxious weeds.

12

Another significant concern is the risk that increased railroad crossings brings to the community. With trains rumbling across roads (both public and private) more than once and hour, delays are inevitable. This is particularly troublesome with regard to emergency vehicles, and is an additional burden on the state and local community to provide the critical service to our area. The SEA acknowledges this concern but suggests that the delays may be minor. Yet, time resulting from these delays can be the difference between life and death in an emergency situation. Moreover, there will be an increase in traffic during construction of the railroad, as numerous workers will be traveling on local roads. The mitigation measures clearly have not taken into consideration the health and welfare of those of us who have lived in this area for generations and are completely inadequate. The SEA suggests that “contractors will be asked to provide central transportation to the work site” and that speed limits would be strictly enforced. DSEIS 4-88, 4-129. Yet, there is no discussion of how these measures will be enforced.

13

NOISE AND DUST ISSUES:

The increase in airborne dust is a great concern as well, having a potentially negative affect on the health of the area cattle and wild animals to which my livelihood is tied.

14

As a tourist attraction, the guests that come to hunt at the ranch and stay in the lodge, also expect to be able to enjoy the tranquility and peacefulness of the quiet and scenic country. The Proposed Action would significantly change this and have a negative impact on all of our current guests and our ability to attract new guests from around the country and around the

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globe. The mitigation measures proposed by the Board [MM74 and 75] specifically direct the railroad operations to take place during the weekday and the daylight hours, precisely during our prime operating hours.

15 cont.

As expressed above, we have serious reservations about the impact of the Proposed Action on the Tongue River Basin environment, my business and my community. We do not believe that the analysis provided in the DSEIS truly researches and provides an in depth understanding of the true impacts on our community and our livelihood. It is hard to imagine how the Board can summarily decide that allowing the railroad to proceed is worth the potential impact of bankrupting my home and my livelihood. We respectfully request that the Board require a complete study and analysis of the concerns we have raised, provide adequate enforceable measures that are transparent to all of us who live here, and require that a new environmental impact study be conducted on the entire railroad line in order to adequately understand the true impacts of the railroad in our community.

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We thank the Board for its review and response of these issues as well as the Board's concern and focus that the impacts of the railroad on a community that we have lived in for 49 years be addressed in a clear and focused manner. There are many complex issues associated with this proceeding, and we appreciate the Board's understanding of the depth and breadth of these impacts.

Regards,

Dick Hosford
Laurie Oakland

SEA's Response to Comment Letter P14
Dick Hosford and Laurie Oakland (December 9, 2004)

P14.1 The commenters express three main concerns: 1) that the proposed project would have an adverse impact on the viability of the commenters' game hunting ranch; 2) that the Draft SEIS incorporates information from environmental documents that are 10-20 years old; and 3) that there is no adequate enforcement mechanism for the recommended mitigation measures.

In regards to the project's effects on game hunting in the Tongue River Valley, SEA acknowledged in the Draft SEIS that the project could have impacts on game (e.g., mule deer and upland game birds) during the construction and operation of the project. As a result, SEA has developed several mitigation measures that address these impacts. These measures include the following:

- Recommended Mitigation Measure 26, which would require that habitat surveys for big game (winter range) be conducted from December 1 to February 28 for each year of construction. Using the results of the surveys, TRRC would then develop appropriate mitigation measures, as needed, for approval by the Task Force in accordance with the process set forth in Mitigation Measure 14.
- Recommended Mitigation Measure 30, which would require that construction activities be coordinated and timed to minimize construction at big game wintering sites from December through March.
- Recommended Mitigation Measure 91, which would require that TRRC participate in the development of a reasonable compensation program for lost wildlife habitat along the rail line prior to beginning construction on any portion of the rail line. Habitat values of acreage lost would be assessed using the U.S. Fish and Wildlife Service's Habitat Evaluation Procedure. The process of valuing habitat loss for individual species or habitat types would include an as needed analysis of potential "habitat fragmentation", i.e., an assessment of the direct loss of wildlife habitat, reduction in the size of existing habitat patches, creation of more edge-type habitat, and creation of barriers that block movement of wildlife between patches.
- Recommended Mitigation Measure 32, which would require several provisions such as the establishment and enforcement of fencing standards that would ensure the ability of pronghorn antelope (and deer) to safely cross the railroad corridor.

Based on the information available to date, SEA concludes that these recommended mitigation measures would be adequate to ensure that the impacts

on deer and pronghorn antelope from the construction of either the proposed Western Alignment or the approved Four Mile Creek Alternative would not be significant.

Based on the analysis in the Draft SEIS and the mitigation measures identified in this Final SEIS. SEA also concludes that potential impacts on game species during construction or operation of either the proposed Western Alignment or the approved Four Mile Creek Alternative would not be significant. Therefore, SEA does not expect that the viability of commercial gaming operations in the Tongue River Valley would be jeopardized from this project.

2) Regarding the age of information used in the document, please refer to Master Response 4, Information Used in Preparing the EIS.

3) Regarding the framework for implementation and monitoring of mitigation measures, please refer to Master Response 7, Enforcement of Mitigation Measures.

- P14.2 The commenter suggests that a new EIS be completed for the entire route from Miles City to Decker and that all mitigation measures be enforceable in accordance with the law. In regards to the request for a new EIS, please refer to Master Response 16, The Need for a New EIS, and Master Response 7, Enforcement of Mitigation Measures.

The public review period on the Draft SEIS, completed in Fall 2004, provided communities in the project area with the opportunity to better understand the project and comment on its anticipated environmental effects and mitigation measures. Chapter 7 of the Draft SEIS includes 89 mitigation measures that are applicable to construction and operation of the entire rail line from Miles City to Decker. Some of these mitigation measures have been revised and improved in this Final SEIS and some new mitigation measures have been added. SEA's final recommended mitigation represents a comprehensive set of actions that would minimize adverse effects on the communities and the natural environment of the project area.

- P14.3 The comment is concerned with the potential for an increase in sediment loading in the Tongue River as a result of the project. For a discussion of this issue, please refer to Master Response 12, Effects of the Project on Erosion and Sedimentation Rates.

- P14.4 This comment raises the concern that the proposed action is inconsistent with the State of Montana's plans to develop TMDLs for the Tongue River watershed because it would: (1) further degrade water quality due to increased sediment loading; (2) alter the hydrology of the watershed as a result of construction in drainage ways; and (3) affect streamflows through surface water withdrawals for dust suppression.

The relationship of the proposed action to the TMDL planning process for the Tongue River planning area is addressed in Master Response 20, Total Maximum Daily Load (TMDL).

The Draft SEIS acknowledges the potential for short-term construction related impacts to water quality, hydrology, and streamflows. To address these concerns, SEA developed a total of 16 mitigation measures in the SEIS to reduce potential construction period water quality impacts. Ongoing consultation with the agencies prior to and during construction activities is one component of the mitigation measures proposed by SEA that is intended to provide consistency with TMDLs for the Tongue River if and when established by the state. Additionally, recommended Mitigation Measure 43 would require the applicant to submit detailed plans for review by local, state and federal agencies in order to assure that overall water quantity and quality is not unnecessarily altered or diminished by the proposed project.

- P14.5 This comment identifies four areas of potential concern: (1) effects of the proposed action on Tongue River water quality relative to the potential for increased soil erosion, sedimentation, and toxic spills; (2) effects of the proposed action on Tongue River streamflows due to water withdrawals associated with construction activities; (3) effects of the proposed action on non-perennial streams; and (4) the effects on wildlife due to stream crossings associated with the proposed action.

With regard to soil erosion, the Draft SEIS explains that without mitigation, both the proposed Western Alignment and the approved Four Mile Creek Alternative could result in significant increases in soil loss (see Table 4.21 in the Draft SEIS). However, with the adoption and implementation of mitigation measures recommended in the SEIS, SEA concludes that the impact of erosion from the construction of either the proposed Western Alignment or the approved Four Mile Creek Alternative would not be significant. (see, e.g., page 4-105 of the Draft SEIS).

As explained in the Draft SEIS, water withdrawals from the Tongue River would have to conform to provisions of the Montana Water Use Act, which governs and protects water rights. Effects on current streamflows are likely to be minimal. During low flow periods and droughts, water rights exceed the available supply in the river. In this event, TRRC would have to acquire water from an existing water rights holder during those periods. Additionally, recommended Mitigation Measure 43 (Water Quantity and Quality) would require the applicant to submit detailed plans for review by local, state and federal agencies in order to assure that overall water quantity and quality is not unnecessarily altered or diminished by the proposed project.

Regarding stream crossings, the Draft SEIS acknowledges and describes the potential for water quality and hydrologic impacts associated with an estimated 42 non-perennial stream crossings that would be required by the proposed Western Alignment. The document also recommends a number of mitigating measures for minimizing impacts from stream crossings. This issue is described in general terms in the Draft SEIS, in Section 4.3.3.2 - Construction-Period Impacts on Soils and Geology (p. 4-101). Additional discussion of impacts associated with stream crossings and the installation of bridges and culverts is provided in Section 4.3.4.2 - Construction-Period Impacts on Hydrology and Water Quality (p. 4-108-111). Proposed mitigation measures for stream crossings are detailed in recommended Mitigation Measures 44 and 46.

Regarding the request for site-specific surveys, several of SEA's recommended mitigation measures directly address this issue. Mitigation Measure 23 would require that, prior to construction, TRRC, in consultation with the Montana Department of Natural Resources, conduct surveys of ephemeral streams that would be crossed by the railroad to determine the potential impacts of erosion and sedimentation on state species of concern and consult with MT DNRC on appropriate mitigation. Mitigation Measure 24 would require that TRRC adhere to any mitigation measures identified in the Biological Opinion issued by the USFWS on July 12th, 2006. These measures would address any potentially adverse effects to federally threatened or endangered species that inhabit the streams that would be crossed as a result of the project. Lastly, under Mitigation Measure 26, TRRC would conduct data reconnaissance surveys prior to the beginning of construction of each segment of the rail line. Annual surveys would take place from July 1 to August 31 for each year of construction for reptile and amphibians species, which are the species most likely to inhabit stream habitat.

Using the results of the surveys, TRRC would develop appropriate mitigation measures, as needed, for approval by the multi-party Task Force in accordance with the process set forth in recommended Mitigation Measure 14.

- P14.6 The comment asks that site specific hydrology analyses be conducted for the changes in the Tongue River I and Tongue River II alignment. As indicated in Section 5.3.4 of the Draft SEIS, however, SEA reviewed hydrological information for the Tongue River to determine if substantial changes have occurred in the existing hydrology of the Tongue River and surrounding valley. SEA analysis of streamflow data for the period of 1985-2003 indicated that there have been no significant changes or abnormal trends in the Tongue River flow since the analysis conducted in Tongue River I and Tongue River II. In addition, SEA evaluated the proposed changes in the approved alignment and found that these changes were in most part minor and would move the rail line further from the Tongue River. In areas where the rail line would be moved further away from the Tongue River, it is less likely that the rail line would affect the river's hydrology. Thus, SEA does not believe that additional site specific hydrology analyses are warranted here.

P14.7 The comment questions the enforceability and effectiveness of the mitigation measures included in the Draft SEIS. As indicated in both the Draft SEIS and this Final SEIS, SEA is confident that its final recommended mitigation, if imposed and implemented, will eliminate or reduce the potentially significant effects of this project. The enforcement issue is addressed in Master Response 7, Enforcement of Mitigation Measures.

P14.8 The comment expresses concern that there is no enforcement mechanism for the recommended mitigation measures in the Draft SEIS. This same concern was raised in the previous comment of this letter. Please refer to Master Response 7, Enforcement of Mitigation Measures. The comment also requests that SEA provide site-specific information on how the project would impact water quality in the Tongue River. For a discussion of potential effects on the Tongue River and the mitigation measures that have been identified to address these effects, please refer to Master Response 12, Effects of the Project on Erosion and Sedimentation Rates. As explained in this response, SEA's analysis of erosion and sedimentation is based on the revised universal soil loss equation (RUSLE), which is included in Appendix I of the Draft SEIS. The RUSLE rating of the Tongue River Project, without mitigation, ranges from 26.9 to 56 tons/acre/year. As noted above, the rating would be lowered to near current levels (1 to 3 tons/acre/year) through implementing the recommended mitigation identified in this Final SEIS.

As discussed in Master Response 12, recommended Mitigation Measure 43, would require that applicable regulatory agencies (including the Water Protection Bureau of the Montana Department of Environmental Quality) review TRRC's detailed plans prior to construction. Through this review, the relevant agencies would be able to identify the potential for site-specific impacts and, if necessary, require that the railroad identify and undertake additional mitigation measures to be identified prior to construction.

P14.9 The concerns expressed in this comment related to potentially adverse effect on game species in the project area were previously expressed in comment 1 of this letter. Please refer to that comment and response for additional information.

P14.10 Recommended Mitigation Measure 32 would require that TRRC implement a plan for determining the options for wildlife passage across the railroad right-of-way. Enforcement of this measure is provided for in Mitigation Measure 17, which would require that TRRC report to SEA, no less than every four months, on the status of implementing the Board's final mitigation measures. In addition, SEA is recommending that a third-party contractor be retained by TRRC to assist SEA in the monitoring and enforcement of mitigation measures during construction and for the first two years of operations, or for any other oversight period the Board might impose. In the event that mitigation is deemed not to be working as intended, the Task Force would impose additional mitigation.

P14.11 Potential economic effects to landowners do not constitute a physical effect on the environment that needs to be addressed under NEPA. However, this issue is discussed briefly in Section 4.3.9.2 in the Draft SEIS. SEA acknowledges in this section that the loss of range land, the inconvenience of severed parcels, and the reduced short-term availability and higher cost of ranch laborers (who may elect to work on railroad construction) would result in a negative economic impact, as would the reduced real estate value of the few homes directly adjacent to the railroad. However, as the discussion also states, TRRC payments to landowners for the purchase of ROW, the possible purchase of water rights for use in construction, and the lease of land for construction centers and equipment-laydown areas could offset the latter negative impact.

P14.12 The comment calls for a quantification of how many fires are expected in the Tongue River Basin as a result of the proposed Western Alignment or the Four Mile Creek Alternative. Given that the factors involved in determining the risks for fires can change from season to season (e.g. changes in prevailing wind patterns or annual precipitation levels), it is not possible to quantify exactly how many fires this project could cause. The 90-acre estimate in the Draft SEIS is based on 2003 MT DNRC statewide data for a typical railroad-related wildfire. SEA also has developed several mitigation measures to address and minimize the potential for wildfires resulting from construction or operation of either the proposed Western Alignment or the Four Mile Creek Alternative (see recommended Mitigation Measures 9-13). Noxious weed control is addressed in recommended Mitigation Measure 21. SEA concludes that the implementation of these mitigation measures would be adequate to ensure that wildfire impacts, from fires would not be significant.

P14.13 Regarding the concerns related to crossings, as stated in recommended Mitigation Measure 55, TRRC shall enter into a memorandum of agreement (MOA) with MDT evaluating project-related safety needs. The MOA would also include the evaluation of each crossing for safety needs and potential traffic problems during construction, including passage of emergency vehicles. Based on these evaluations, the MOA would identify specific safety measures, such as warning signals and devices, and appropriate measures such as grade separations to alleviate any traffic problems. Mitigation Measure 66 would require that during the operation period, TRRC adhere to all reasonable Federal, state, and local requirements regarding train operations, including requirements that relate to maximum durations of crossing blockage.

Regarding the potential for increased traffic on local roads, recommended Mitigation Measures 53 and 54 should minimize the amount of construction-related traffic on public roads. Regarding the enforcement of these and other measures, please refer to Master Response 7, Enforcement of Mitigation Measures.

P14.14 The Draft SEIS recognizes the potential adverse effect of dust, especially during the construction period. Section 4.3.7.2 of the Draft SEIS contains a discussion of fugitive dust emissions based on US EPA criteria. Recommended Mitigation Measures 69-73, would decrease the generation of fugitive dust as a result of this project.

P14.15 The lodge is located in the vicinity of Birney to the west of the Tongue River. As shown in the exhibits in Appendix A, the approved alignment is located on the eastern side of the river in this area.

The lodge is located well outside the noise impact contours for both the construction and operation periods, as described in Section 4.3.8.3. During the construction period, the noise impact contour would extend outward 500-feet from the railroad centerline, assuming that all construction equipment would be operating at the same time. As indicated in Table 4-38 of the Draft SEIS, the noise contours for the operation of the proposed Western Alignment and the Four Mile Creek Alternative are 250 feet and 247 feet, respectively. Because the lodge is located well beyond the area where significant noise increases would occur during construction and operation, SEA does not expect that project-related noise would adversely affect the viability of the ranch.

P14.16 The comment calls for a new EIS that covers the entire line from Miles City to Decker and urges that all mitigation measures be enforceable by law. For a discussion of these issues, please refer to Master Response 16, Need for a New EIS, and Master Response 7, Enforcement of Mitigation Measures.

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