

COMMISSIONER OF SECURITIES & INSURANCE

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COMMISSIONER



OFFICE OF THE MONTANA
STATE AUDITOR

September 23, 2015

Ken Blodgett
Surface Transportation Board
395 E Street, S.W.
Washington, DC
20423
ATTN: Office of Environmental Analysis, Docket No. 30186.

Dear Mr. Blodgett,

I am pleased to have the opportunity to submit these comments on the Draft Environmental Impact Statement for the proposed Tongue River Railroad. As one of the five elected officials that comprise Montana's Board of Land Commissioners it is important to me that all potential issues are thoroughly analyzed before an ultimate decision is made on the railroad. Consequently I believe two issues were not adequately addressed and warrant further attention.

Displacement of Coal Production

The DEIS states, "Tongue River coal production would substantially displace other U.S. coal production." The average for the various scenarios analyzed in the DEIS is that for each ton of Tongue River coal mined, 0.76 tons of production from Powder River Basin coal will be displaced and .95 tons of production from all U.S. coal mines will be displaced. The DEIS does not, however, project from what mines this displacement will occur. Given the importance of the coal industry in the region some effort must be made to identify the mines whose production will be displaced.

Will displacement occur at Westmoreland's Absaloka mine causing a decrease in royalty payments to the Crow Tribe? Will the displacement occur at Colstrip or in Wyoming's coal fields? These are important questions that have significant bearing on Montana's economy and thus demand attention. If development of the railroad and a coal mine is simply displacing production elsewhere it may be superfluous.

Common Carrier Status

I was unable to locate any discussion in the DEIS on the issue of granting the Tongue River Railroad common carrier status. Common carrier status brings with it the ability to condemn private property and such a designation should not be given lightly. I believe there are two main points that deserve scrutiny with respect to such a designation.

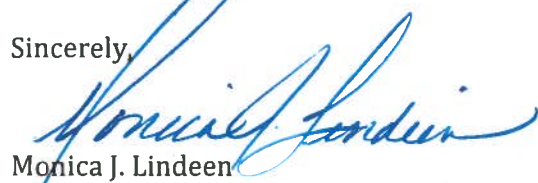
First, will the TRRR truly serve multiple mines or will it be captive to production from only the proposed mine at Otter Creek? The DEIS mentions two other possible mines potentially served by the TRRR but they are speculative at best. One is the old Montco mine that was permitted for ten years but never mined an ounce of coal. The likelihood of the old Montco mine being revived is questionable. The other is the Canyon Creek mine. This is even less probable than Montco as this property has been on the drawing board for decades but a permit application for this potential mine has never been submitted. Therefore, the TRRR will almost certainly serve a single mine and haul a single commodity. Does that warrant common carrier status?

The second question is whether the TRRR could construct and operate its line without the common carrier designation. Interestingly, a similar situation arose when the Signal Peak mine north of Billings was permitted. Signal Peak needed a railroad to haul its coal and planned a line from the mine to Broadview, Montana. It is my understanding that Signal Peak did not seek common carrier status. Instead, it negotiated with the landowners along the route and obtained a right-of-way without the power of eminent domain. Could TRRR act in a similar fashion? Private property is sacrosanct in Montana and granting an entity the ability to take private property should only be done after all other options are eliminated. This was not done in the DEIS and I trust it will receive attention in the final document.

For more than 30 years, Montana has heard promises of increased coal production from the development of the Tongue River Railroad. For more than 30 years, landowners along the proposed route have had to deal with the uncertainty of having their private property condemned for the rail line. The Tongue River Railroad may provide transportation for the coal reserves of the Tongue River Valley. It may also threaten to displace Montana's existing, mature coal industry and threaten the livelihoods of area residents as it has the past three decades. The Surface Transportation Board must detail where coal production displacement will occur and provide in depth analysis of whether common carrier status is indeed warranted for the proposed railroad.

Again, thank you for the opportunity to provide these comments. I look forward to seeing the Board's examination of these two important issues.

Sincerely,



Monica J. Lindeen
Commissioner of Securities and Insurance
Office of the Montana State Auditor