



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
BILLINGS REGULATORY OFFICE
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EI-19163

Please reply to attention of:

December 19, 2012

Regulatory Branch
Montana State Program
Corps No: **NWO-2011-02465-MTB**

Subject: Tongue River Railroad Draft Scope of Study
Environmental Filing, Docket No. FD 30186

Surface Transportation Board
Attn: Mr. Ken Blodgett
395 East Street Southwest
Washington, D.C. 20423-0001

Dear Mr. Blodgett:

Reference is made to your request for comments regarding the Tongue River Railroad Draft Scope of Study. The study area is located along an 83-mile proposed construction area between Miles City, Montana, and the previously planned Montco mine near Ashland, Montana, and the proposed Otter Creek Mine east of Ashland, Montana.

Under the authority of Section 404 of the Clean Water Act, Department of the Army permits are required for the discharge of fill material into waters of the United States. Waters of the U.S. include the area below the ordinary high water mark of stream channels and lakes or ponds connected to the tributary system, and wetlands adjacent to these waters. Isolated waters and wetlands, as well as man-made channels and ditches, may be waters of the U.S. in certain circumstances, which must be determined on a case-by-case basis.

The Council on Environmental Quality regulations found at 40 CFR 1500.2(c) require that the environmental review for required permits should be integrated into the National Environmental Policy Act (NEPA) process so that the alternatives analysis and permit review procedures can be done concurrently rather than consecutively. This prevents un-permittable alternatives from being carried forward, and can prevent the least environmentally damaging practicable alternative from being eliminated as an alternative that is carried forward in the NEPA review. Normally, for projects expected to require a Section 404 permit, this review takes the form of a Draft 404(b)(1) Analysis. It is recommended that a Draft 404(b)(1) Analysis be performed and included as part of the Tongue River Railroad Environmental Impact Statement.

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<http://per2.nwp.usace.army.mil/survey.html>. If you do not have Internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax. If you have any questions, please call Shannon Johnson at the Billings Regulatory Office at (406) 657-5910, and reference File No. NWO-2011-02465-MTB.

Sincerely



Todd N. Tillinger
Montana State Program Manager