

Ken Blodgett
Attention Environmental filing, Docket No. 30186
Surface transportation Board
395 E Street SW
Washington, DC 20423-0001

Dear Ken,

My family and I own and operate Rocker Six Cattle Company, a cow-calf livestock operation in Southeastern Montana. We are potentially impacted by several of the proposed railroad alternatives of the Tongue River Railroad project. This project would severely impact our operation. According to the Draft Environmental Impact Statement, the proposed Colstrip Alternative and the original Tongue River Alternative would cross our land. We stand strongly opposed to the project for reasons raised below.

These comments explain how the Draft EIS for the TRR failed to address impacts to our ranching operation. This is not a complete list of every impact the railroad would cause, many impacts would not be evident until the project would be built.

Nearly all of the concerns we have with this project as it applies to our ranch would be “negotiated” with the applicant after the certificate would be issued. This is unacceptable, as the applicant has no guidelines or incentive to be sensitive to our issues. In fact, at the DEIS hearing in Lame Deer, David Coburn, the attorney for the applicant, made the comment to an acquaintance that the applicant looked forward to receiving the certificate so they could immediately file condemnation proceedings against the landowners, because it was the only way to bring landowners to the table. I believe that statement speaks volumes; they have no intention of “negotiating” any of our concerns, but will rely on wielding the club of federal eminent domain as leverage. The term “negotiate” needs to be clearly defined. If a landowner attempts to negotiate an annual fee for an existing livestock pipeline that the railroad would cross, and the railroad refuses, does this constitute a negotiation? If landowners attempt to negotiate a Right of Way (ROW) easement rather than fee title, and the applicant refuses, is this considered a “negotiation”? I think not. The negotiation guidelines need to be very clear within the mitigation section.

The EIS never once mentions cows. It does mention threatened and endangered species, and mentions wildlife in general terms, but does not once mention cattle, or the impacts to cattle. Nearly every acre of the Colstrip Alternative crosses private grazing land utilized by cattle, and yet the impacts to livestock and the livelihoods of the landowners crossed are not addressed.

During construction, (9.3.12,) 297 million gallons of water would be needed on the Colstrip Alternative. The document claims that this water would be negotiated with the landowner. It also mentions that this water could come from wells. Our wells are limited for volume, and will pump air. Does the TRR have the power to condemn for water? Would the TRR pay for the electricity to pump this water? How would the water be transported? The applicant has claimed that all construction impacts would be within the ROW. If water is trucked from a well that is outside of the ROW, it will have huge impacts on private access roads, dust, ruts, and if these huge volumes of water would be hauled, the county roads would be impacted as they were in the Bakken oil fields and in Wyoming during Coal Bed Methane development. The county roads were destroyed. There is no mention of these impacts within the DEIS. Just prior to shipping our calves in the fall, (our only cash crop and only payday) the cows and the calves on them have had issues with dust on dry years. This dust is from the adjacent county road. In dry dusty conditions, cattle get “dust pneumonia” which impacts the respiratory tract. Cattle die from this condition. If this massive volume of water would be hauled on trucks on a dusty county road, this would have a severe impact on cattle health. This also brings water rights into question. There simply is not enough well water

to be used for construction. Rosebud Creek has a minimal amount of water as well. What would the impacts be if they dropped the level in the Rosebud by pumping water? Could they condemn to get this water? Water in the Tongue River is over allocated as well. If the Tongue River Water Users refuse to lease water, could the applicant condemn? Would downstream users have an opportunity to challenge?

Where would the work camps be located? The document claims they would be in Ashland, but could this change? Could the applicant condemn for this too?

What would the logistics be to keep cattle from crossing the ROW during construction? I have seen projects such as this, and the fence issue is a nightmare. Who would be responsible for keeping fences functional during the construction phase? The applicant or the landowner? The FEIS should be very clear that if landowners are expected to drop what we are doing and gather cattle out of the construction area, they should be compensated robustly for their time. This should not be “negotiated”; the burden of keeping the fences intact and functional during construction at the expense of the applicant should be added as a mitigation requirement.

Where would the staging areas be located? The document claims that they would be located within the ROW. The ROW is 200 feet wide; this is not enough room for ROW construction and a staging area. If the staging areas would not be allowed by the landowner, could the TRR condemn for these areas?

There is no mention in the document as to how a landowner could use isolated parcels of land. This is land on the Colstrip Alternative that lies between the railroad Right of Way (ROW) and the Greenleaf/Lay Creek county road. These parcels would be isolated from the rest of the pasture, and would have no water source, rendering them useless for continued grazing. Would the applicant drill wells, at their expense, on these parcels so we could continue to graze these parcels? Would the applicant or the BN compensate landowners for electrical use of the wells? One of the “solutions” that was mentioned by a STB member at the hearings was to sell the parcel to a neighbor. This is not a solution, and demonstrates the lack of comprehension of the impacts this unneeded project would create. In 12.2-29, under Severance of Contiguous Properties, where is the 147 acres of land impacted and 136 acres of irrigated farmland? Is it on the Amish community? Have the Amish been contacted? It also states that the severance would “...be rendered unsuitable for its current use”. Once again, there is no mitigation, which is contrary to the purpose of the EIS process. To make this statement with no mitigation is, once again, a complete failure and a mockery of the EIS process. This document should acknowledge that a railroad IS severance, not just to a few isolated parcels. Landowners should not be burdened with negotiating the problem they did not cause. Any agricultural losses through severance and isolation should be addressed to the landowner’s satisfaction before any permit is issued, and be specifically mitigated in the document.

Under the Colstrip Alternative, (9.3.12), it states that 9 wells would be permanently closed. Where are they? Who are the landowners? Will the applicant replace these wells at their expense? If the wells would be replaced, the water right priority date would not transfer to the new well. Stripping people of senior water rights in an area where water is tightly allocated, and on a ‘first in time, first in right’ basis TRR/BN would be impacting and violating water rights under Montana Water Law. It is outrageous that eliminating wells does not have mitigation spelled out in the DEIS. The assumption is that the landowner would absorb the loss, and these wells would be replaced at the landowner’s expense. This should not be “negotiated”. The STB should require any well taken out of production be replaced, and the mitigation language needs to be in the FEIS.

At grade crossings are an issue. They can be negotiated, but the landowner assumes the liability for these crossings. BN requires the landowner to prove that he has at least \$1 million in liability insurance before negotiations even begin. The BN agreement also requires the landowner to be responsible for the cost of maintaining the crossing. If the landowner fails to maintain the crossing the BN reserves the right to do the maintenance themselves, and charge the landowner up to \$800 per hour for the service. If the

landowner assumes liability, could the landowner force the applicant to negotiate access to those crossings? Could the landowner deny access to the railroad? We participate in the Block Management Program, which administers free public hunting access to our private land. If a hunter is hit on the crossings, and is injured or killed, who is liable? The landowner is liable. This is a huge impact, and is not addressed in the document. This information comes from documents directly from the BN.

The Amish community on Tongue River would be bisected by the Colstrip Alternative. The Amish do not carry liability insurance. How could they “negotiate” with the BN for crossings needed for children to get to school, or for work teams and buggies to cross? This issue is not addressed in the document

The culvert design, (figure 2.7) or “cattle passes” mentioned in 2.2.8 are unacceptable. They are too small for cattle to naturally use. From a cows perspective she knows that she cannot fit through the far end, because perspective makes it look like she will get stuck. Therefore, she will stand at the entrance and not move. This is why cattle are struck and killed on railroad tracks. They crawl through the ROW fence instead of utilizing the culvert, and are struck by the train. Water builds up in the bottom of a culvert, which cattle find undesirable to walk through. In colder weather, ice builds up in these culverts, complicating movement. Horses also are very reluctant to enter culverts, and it is difficult to enter these “tubes” horseback. Leading a horse through water or over ice is also unacceptable. This is a classic example of someone designing something that has no idea about cattle psychology or the movement of cattle. Culverts are designed to move water, not herds of cattle. The BN line north of Colstrip has at least 17 trestles. Cattle can move easily under the tracks, water moves well underneath, and if needed, a livestock water pipeline could be placed within the width of a trestle. Cost of a trestle should not be a deciding factor in construction. The expense landowners are expected to absorb should this railroad be constructed should be the deciding factor, not the bottom line of the applicant. It is imperative that a trestle be constructed in the Greenleaf Creek channel along the route. This would allow cattle to move at will under the tracks, and would allow us to move cattle horseback. The legal description of this site is 1 South, 43 East, SW ¼ of Section 11. This is a reasonable request, and is common on many other lines in the area operated by BN.

There are 3 “set aside” or double track areas within the Colstrip Alternative mentioned in the document 2.2.12.3. Each set aside is 8,500 feet. This equates to 5 miles of track designed for stopped trains. Where are they? There will not be 5 miles of set asides that do not have a crossing. If trains are on the set asides, this cuts off access for wildland fire access, feeding in winter, hunting access, moving cattle across the ROW, and general ranch access that currently exists. We simply cannot be expected to wait for the train to move to gain access to our own property. These set asides also impact cattle culverts mentioned above. These culverts would be longer than the dimensions in the document, contributing to further problems with cattle movements.

Under Socio Economics, 15-25, it states that on the Colstrip Alternative, agricultural losses would be \$188,960 per year. This equates to \$4,500 per mile per year. Will Arch/BN/TRR annually compensate landowners or will the landowners absorb these losses? The mitigation for this issue needs to be added to the mitigation requirements. Any compensation for these losses should not be a onetime affair; the impact compensation should be set on an annual basis.

There would be one residence displaced. Where is it? Who is the owner? What does “displaced” mean? Would BN/TRR replace the residence?

Under 15.5.2.2, Populations and Housing, there is estimated to be over 400 workers needing housing. Where is the available housing? Table 15.2 contradicts available living space for workers. Therefore the only other alternative would be work camps. Where would these be located? Within the 200’ ROW? Or would they be located on private land on areas to be determined? Could the work camps be constructed

on private land against the landowners will, and could federal condemnation be used to take land for the camps?

Where are the access roads to the ROW located? Will these access roads be negotiated with the landowners? If access is denied, would the TRR have the power to condemn? Were these access roads surveyed by the Section 106 crews? On the 3 bridge site alternatives at the mouth of Lay Creek on Tongue River, how would access be gained to the other side of the river? Under Mitigation and Unavoidable Environmental Consequences, 12.2.4.4, it states that the TRR would "...coordinate with landowners while mitigating easements and *access points*..." (Emphasis added) During the Section 106 conference calls, I asked where the access roads on the Colstrip Alternative would be located, and was told by the applicant's lawyer that there would not be any access roads needed to the ROW. The above quote is a contradiction to that comment. If there are access roads, where would they be located? On whose land? Were there cultural surveys done? This is a typical bait and switch, and they will not be "negotiated", Federal condemnation will be exercised by the TRR. In 14.5.1.1, it claims that the TRR would "relocate" a road to a natural gas well. Where is the location of this well? Since this road would fall under the Area of Potential Effect, have the cultural surveys been conducted on this proposed new road?

In 2.3.3.1 induced mines are mentioned. The Montco mine permit was pulled because of the complexity of reclamation. The Canyon Creek Mine would be under land owned by Forest Mars. Is Forest Mars a proponent of coal development, or did he buy into the TRR project to prevent it from being built across his property? Is he in favor of opening a mine on his land, but opposed to the railroad? You can't have it both ways, Mars's actions do not mesh with the claim that a mine may happen on his land. These "induced mines" are pure speculation, and are a diversion from the only market which is Asia, which should be recognized as such.

Under the Q and A section, S.4.3, access for field surveys is mentioned. The Colstrip Landowner Group met with the ICF Wildlife Survey biologist who was seeking access to our private land. We had just experienced the 250,000 acre Ash Creek fire in July of 2012, the 2nd largest fire in Montana history. This fire burned approximately 50% of the Colstrip Alternative. We were interested in granting access to the study area, but were told they wanted the surveys done within a few months. The Ash Creek fire had not re-vegetated, it was still ash, and we said we would allow access if ICF would allow the ground to go through at least one growing season. The reason was that there was no habitat, as regrowth had not happened, and if there is no habitat, there is no wildlife. ICF declined to do the studies, therefore it cannot be construed that the landowners denied access. We offered access with conditions, and we were turned down. This is a prime example of "negotiations". When any conditions are implied; the railroad interests refuse to truly negotiate.

The Q and A also claims that ICF only surveyed 51% of the alternatives for cultural sites due to access issues. This is deceiving and blatantly untrue. ICF had access to nearly 90% of the Colstrip Alternative, and signed access agreements in hand, and turned down offers to be guided on land east of Tongue River by a landowner. To claim that only half of the sites were accessible is simply not true. Further, many of the cultural sites were not properly recorded, were recorded incorrectly, or simply not recorded at all. There were several burial sites that were found, and yet there are no records of them anywhere. The credibility of these surveys is in question. The landowners allowed access assuming the surveys would be legitimate. Unfortunately they were not. In fact, of all of the Alternatives, the Colstrip Alternative had the most recorded sites, (figure 11-10) but in S.4.4.7, it claims that the fewest tribal resources were found on the Colstrip Alternative. This is a flat lie. The most resources were found on the Colstrip Alternative because it had the most access. ICF needed to be more specific about the different routes, not average sites in one lump to make it appear that cultural sites were sparse. This is an underhanded attempt to skew actual numbers.

According to maps used on the archaeological surveys on the proposed Colstrip Alternative, there would be several Greenleaf/Lay Creek county road re-locations and crossings. These details were not shown in the EIS document. This is an added loss of production, as the road relocations would eliminate more acreage than the 200' ROW. These relocations would also create isolated parcels mentioned above. Also, these archaeological maps showed in detail at least 6 county road crossings. All of the crossings would have 2 hairpin turns per crossing so the road would cross the railroad at a 90 degree angle. This further takes grazing land out of production, and creates safety questions for the rural users of these roads as well as public use. This is an impact that was not shown in scoping or the DEIS process and is a substantial agricultural impact to all landowners. Could condemnation be used in road relocations? Who pays for road relocations? The applicant? The county through taxes? Where would the fill dirt come from? Gravel? Would it come from inside the ROW of the railroad, or would it come outside of the 200' railroad ROW? Could the applicant condemn for use of gravel and fill dirt? From these maps, I estimated that close to 6 miles of county road would be relocated along the Colstrip Alternative. This is a huge impact on lost acreage, and is glossed over in the document.

In 2.2.12.2, there is mention of communication towers. Where would they be located? Inside of the ROW? Would there be access roads from a public road to these sites? Would these access roads have had Section 106 surveys done since they are within the APE? Could the applicant condemn private land for these access roads? Could the applicant condemn private land for tower sites?

There are several livestock pipelines that would be crossed by the Colstrip Alternative. These lines vary from 1 1/4" to 2" PVC and HDPE pipe. This pipe occasionally fails and needs to be repaired or replaced. I doubt that the BN/TRR would allow us to shut down train traffic for a few days while we would dig up the pipe under the railroad grade. If the pipe would fail, we would be out of water on the other side of the tracks. This is a huge impact. We need the ability to maintain and continue to use these water lines. They existed long before the construction would commence, and we need assurance that their use would continue. Historically, the railroad has been unwilling to even consider maintenance for infrastructure under the rails not owned by the railroad. This is unacceptable. Rosebud County pumps water from the Yellowstone River at Forsyth to water the Rosebud County Cemetery. The water line is routed through a culvert under the railroad grade. BN charges Rosebud County \$546, (up from \$90 in 2009) per year for the line. Range Telephone in Forsyth paid a huge sum to lay phone line in the ROW to businesses in Forsyth, and pays a substantial annual fee for rent. This issue needs to be clearly addressed in the document to the satisfaction of the landowner, not the applicant. If a pipe breaks under the ROW, and the BN will not allow us to fix the pipe, then the BN should be required to drill a well, at their expense, on the other side of the ROW so we could continue to water cattle. This is another example of severance and isolation. Anything less is a taking.

In 12.2-29, 38 acres outside of the Colstrip Alternative ROW will be affected by road relocations. Where are the maps of these crossings? Where is the land loss along the alternative?

The section on fire Chapter 4, (p. 21) is also deceiving and misleading. This area is a magnet for lightning. In 2012, we (through the DNRC and Rosebud County) fought over 500,000 acres of fire within 20 miles of my house. This year, (2015) we have fought over 20 fires within the same radius. We have a very good sense of fire behavior, and the fire section within the document does not reflect fire activity. Railroads do start fires, many of them, and the reason they are reportedly relatively small in acreage is because most railroad fires are not reported. Existing railroads have several barriers to prevent the spread of fire. An example is the BN line along the Yellowstone River. If a train starts a fire, the fire spread is reduced by the river as a barrier, a frontage road, and an interstate highway as well as irrigated farmland. On the TRR Alternatives, there are no barriers, and fire will spread very quickly. The fire section of the EIS is an absolute failure, and is unacceptable. The 5 miles of set aside tracks mentioned above also prevents access to fires. The railroad is an obstacle to accessing fires, and set aside tracks with unit trains sitting

on them are an added burden to landowners trying to access a range fire. Railroads not only start fires, they restrict access to naturally occurring fires.

For over 30 years, we have dealt with the threat of the construction of this project, and have held off on any capital improvements. The original 89 miles would have impacted natural migration of our cattle to grazing ground on the Tongue River. We had planned on cross fencing our summer ground, but if the Tongue River portion of the railroad had been built, it would have negated the project and it would have rendered it useless, and there would be no compensation by the railroad for it. Then the railroad was planned to turn up Roe and Cooper Creek, through the middle of our summer ground. Once again we held off fencing and water projects until we knew the railroad would again fade away. Currently, the applicants preferred alternative is the Colstrip Alternative, which creates new challenges for our long term plans. For 30 years, we have been holding off any of these improvements until a decision is made. We are sick of it. My father is pushing 80 years old, I am anxious to implement these improvements which would make the ranch much more efficient to operate, and yet if we would implement these expensive improvements, and the railroad would be permitted, the railroad would bisect and render useless these improvements. We would be forced to “negotiate” these impacts, and would not be compensated for the loss.

The Colstrip Alternative, according to the document, would create the least amount of jobs, have the highest amount of impacts on minority populations, has the most recorded cultural sites, has moderate to high adverse impacts, has the 2nd largest amount of wells destroyed, has the most impact for noise receptors, and has the largest amount of county road crossings and delays. For these reasons, the Colstrip Alternative should be taken off the Alternative list, and because of the lack of public convenience and necessity and highly speculative markets, the STB has no choice but to choose the “No Action Alternative” for the entire project. Anything less would be a disservice to the public and the landowners along the proposed routes. A for-profit, private corporation should not have the power to use (and abuse) federal eminent domain to condemn private property so it could financially benefit by exporting coal to Asia at the expense of private landowners in a sparsely populated area.

The Environmental Impact Statement process is designed to mitigate the negative impacts of a project, should the project go forward. Yet, nearly every concern that we have as landowners is reduced to “negotiation” with the applicant. None of our concerns are mitigated or addressed. There is no other entity that has more to lose and is more heavily impacted than private landowners. And yet there is no standard or specific mitigation for livestock water loss, liability for crossings, severance, noise, and the simple task of moving cattle. According to the EIS, the TRR assumes no responsibility for impacts it creates to livestock operations; it assumes all concerns raised by landowners will be negotiated after the permit is granted. If public convenience and necessity would be valid (which it is not) then the STB should be required to specifically mitigate the issues we have raised within these pages BEFORE the permit is granted (or denied) and it should be in print and specifically addressed within the Final EIS. Anything less is a failure of the purpose of the EIS, and will be challenged by the public, and rightfully so.

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