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11 April 2013

Victoria Rutson
Director
Office of Environmental Analysis
Surface Transport Board
395 E Street SW
Washington, DC 20423

Re: Right of entry to private land along proposed Tongue River Railroad routes

Dear Director Rutson:

This letter is a follow-up to my March 14, 2013 letter regarding entry agreements. The landowners represented by our firm now include Kurt Baumgartner, Henry and Kitte Coffin, Joe and Helen Curran, Joseph W. Hanna Trust, Highland Rim Properties Inc., Rocker Six Cattle Company, Trusler Inc., Dick and Kay Wells, and Hugh and Ann Wells (together the "Landowners").

The Landowners have now had a chance to discuss OEA's proposed terms of entry for EIS surveys. They are willing to allow all reasonable requests for entry by OEA and its consultants, on a case by case basis, for the purpose of such surveys, according to the terms of the attached temporary entry agreement, if OEA will agree to the following conditions as part of a Memorandum of Understanding between the Landowners and the agency:

1. OEA agrees to conduct environmental and cultural surveys dependent upon habitat and precipitation levels – including but not limited to bird counts, medicinal plant counts, and nesting sites – over the course of at least three years, starting in March 2013, to ensure that local flora and fauna are properly catalogued after the habitat destruction caused by recent devastating fires in the area; and
2. In the event that a government agency declares any of the survey area a natural disaster area, or drought conditions exist according to the U.S. Drought Monitor (<http://droughtmonitor.unl.edu/>) in one or more of the three survey years, OEA agrees to extend the survey period by one year for each year in which natural disaster and/or drought conditions exist, up to a total potential survey period of five years.

The Federal Highway Administration reports on its website (<http://www.environment.fhwa.dot.gov/stmrng/nepatime.asp>) that, for the 23 projects subject to NEPA for which a Record of Decision (ROD) was signed in Fiscal Year 2011, the average time period from the signing of the Notice of Intent to the signing of the ROD was 79 months, more than six years. The Tongue River Railroad EIS also bears the exceptional burden of having a previous EIS rejected by the courts for inadequacy. As such, the Landowners submit

April 11, 2013

that the proposed survey timeline will not cause any unreasonable delay, and is necessary for creating a valid and complete EIS.

The Landowners, who have endured serial attempts to site this railroad against their will for more than thirty years, deserve nothing less than a properly researched EIS that fully encompasses all affected resources. The Landowners' proposed conditions will help to ensure that outcome. The attached letters from Montana biologists experienced in surveying regional flora and fauna, for EIS and other purposes, support the necessity of the Landowners' conditions. Also attached is the 2012 Ash Creek Fire Progression Map, which illustrates the severity and scope of last year's fire damage.

The Landowners respectfully request a private meeting with OEA representatives to discuss this offer and negotiate mutually acceptable terms of entry. If OEA declines this offer, the Landowners respectfully request that decision in writing.

Sincerely yours,



Carrie La Seur

Enclosures



ROCKY MOUNTAIN
COLLEGE

Victoria Rutson, Director
Office of Environmental Analysis
Surface Transport Board
395 E. Street SW
Washington, DC 20423

Dear Director Rutson:

I am writing on behalf of the landowners along the proposed Tongue River Railroad Routes to express my sense of the environmental concerns that should be considered with regard to impacts to plant communities and plant species of concern.

The massive and very hot fires that ravaged the landscape have left the plant communities in a dire state, particularly when combined with the severe drought conditions persist in most of central and eastern Montana. The current dry spring season, at this point, suggests that dry conditions will continue this summer. What that means is that there is a very high likelihood that annual weeds and exotics will invade the disturbed and open landscapes everywhere within the fire's reach. The soils are highly susceptible to erosion by wind and raindrops. Disturbed soils contribute to weed growth, at least over the short term. This situation means that native plant species will be slow to recover because their germination depends heavily on precipitation. If rainfall is below normal, the rain that does reach the soil surface will evaporate or be used by shallow-rooted annual plants (mostly weed species).

Although the plant ecologists who prepare the biological reports for the Environmental Impact Statement (EIS) may get some helpful information from the Custer National Forest and the Montana National Heritage Program (MNHP) about plant communities and rare species that occupied the lands prior to the fire, this information will not be sufficient to determine what the future conditions will be in the post-fire future. We don't know, at this point, the extent of the impact of the fires on the soil seed bank. If the fires burned extremely hot and deep into the soil profile, native seeds may be gone. If the summer season is hot and precipitation is

low, then what native seeds are in the seed bank will wait until a better time. *Carex gravida*, for example, occupies moist woody draws and riparian sites in the Ashland areas of the Custer National Forest. Its seeds will not germinate until there is enough moisture and shade to supply the conditions it requires. On the other hand, *Astragalus barrii*, a cushion plant, occupies sandstone bluffs on very dry sites. Its may germinate or it may sprout from roots this summer or in a few years.

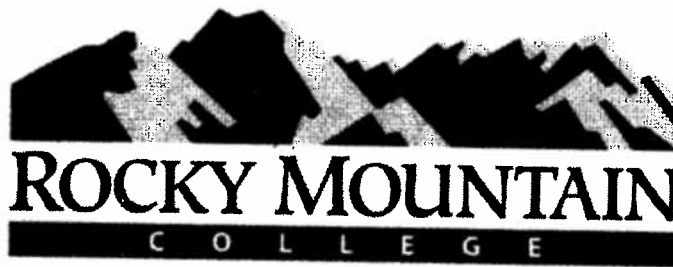
Therefore, I suggest that 3-5 seasons of surveying to native plant responses and to see if there is recovery of the dominant plant species in the native communities. Plants native to riparian areas, wetlands, and woody draws should be surveyed for two years (at least) after a year with normal and/or above normal rainfall.

It is important to note also, that activities that will compact, move or disturb soils in this post-fire phase will definitely be detrimental to the recovery of native prairie lands. Considerable restoration mitigation, particularly at riparian crossing, wetland sites, and woody draws, and/or avoidance of susceptible and erodible landscapes must be addressed during EIS preparation.

Sincerely yours,

A handwritten signature in cursive script that reads "Jennifer C. Lyman". The ink is dark and the signature is fluid, with a large initial 'J' and a distinct 'C' for the middle name.

Jennifer C. Lyman, Ph.D.
Professor of Botany and Environmental Sciences
Rocky Mountain College
1511 Poly Drive
Billings, MT 59102



April 11, 2013

Victoria Ruston
Office of Environmental Analysis
Surface Transport Board
395 E Street SW
Washington, DC 20423

Re: NEPA EIS Process for Tongue River Railroad

Dear Director Ruston,

Please consider this letter in support of the request for extending the timeline for the NEPA EIS process associated with the proposed Tongue River railroad. In the past few years, this area has experienced record rainfall (2011), near record drought (2012), and fires (2012). Under the best of circumstances, data collection over the course one or two years could not adequately assess the landscape. Given the unusual events of the last two years, it is even more unlikely that data collection over the course of one or two years would capture the average conditions of the landscape.

Since the whole point of the NEPA EIS process is to describe characteristics of the landscape and to evaluate potential impacts on the landscape, I strongly support the request that the timeline for the NEPA EIS process be extended.

Respectfully,

Dr. Dan Albrecht
Professor of Biology
Rocky Mountain College

11 April 2013

Victoria Rutson
Director
Office of Environmental Analysis
Surface Transport Board
395 E Street SW
Washington, DC 20423

Re: NEPA EIS Process related to Tongue River Railroad routes

Dear Ms. Rutson:

This letter is in support of an extended timeline for NEPA processes related to the alternatives for the proposed Tongue River right of way. In the Surface Transportation Board Decision dated March 22, 2013, Docket No. FD 30186 it states that:

FINAL SCOPE OF STUDY FOR THE EIS:

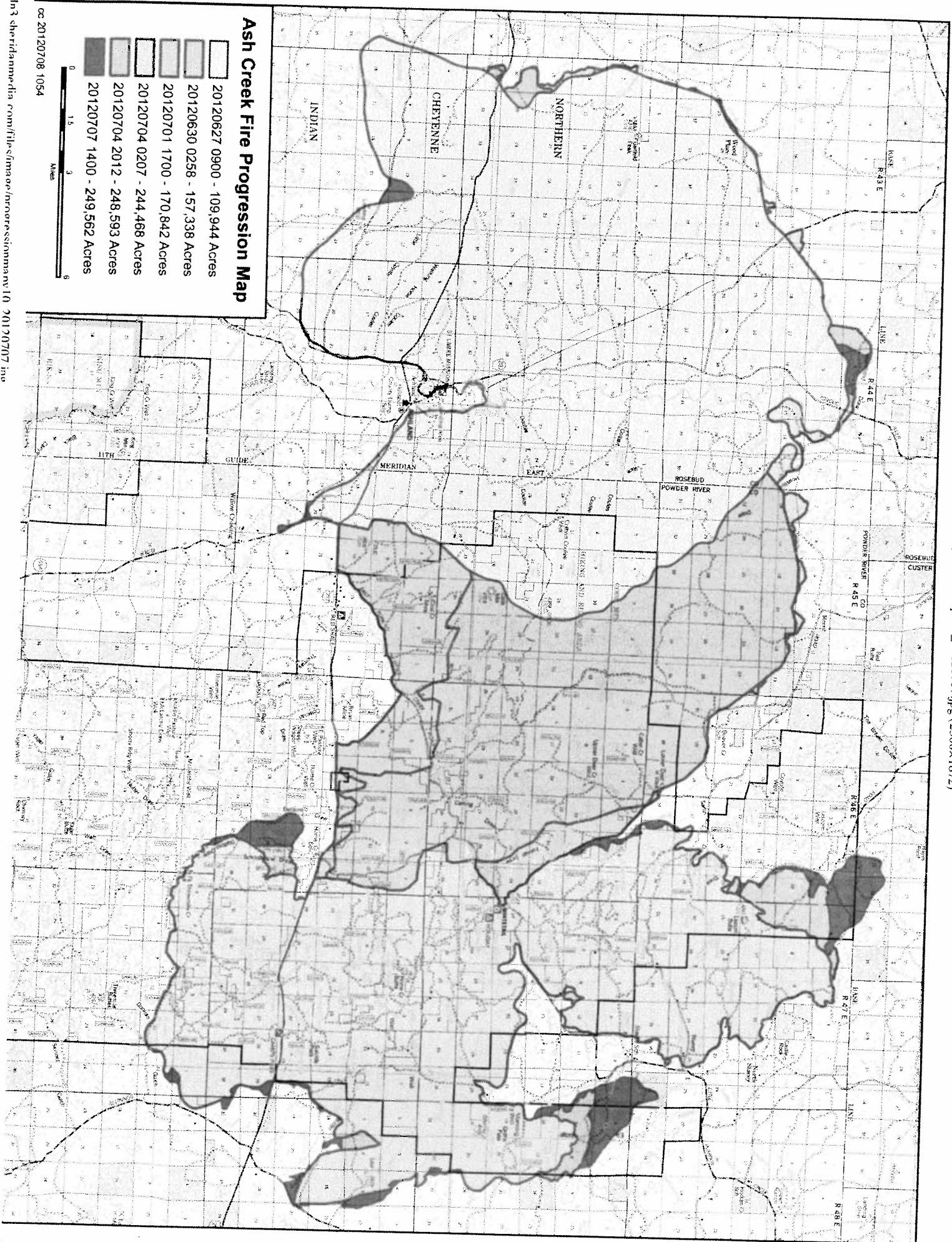
Environmental Impacts Analysis: Section 5.c. States that the EIS will: Identify and describe any wildlife sanctuaries, refuges, or rearing facilities; national or state parks, forests, or grasslands; critical, unique, or high-value habitats that support threatened or endangered species; and riparian habitats; and evaluate the potential impacts to these resources resulting from TRRC's preferred route and each alternative.

To adequately determine, "refuge sites, high-value habitats, riparian habitats, refuges and sanctuaries" with only a one or two year analysis, is inadequate since this region has experienced one of the wettest years on record (2011) and then subsequently one of the driest years on record (2012), with significant fires. During extreme weather events refuges and riparian areas may or may not be located, and even if they are, they may not serve as an indication of the "mean" conditions on the landscape in question.

A longer term analysis of critical areas is clearly warranted in this situation.

Thank you for considering this opinion.


Kayhan Ostovar
Professor Environmental Science and Fish and Wildlife Conservation



Tongue River Landowners' Temporary Entry Agreement

I (landowner name) _____ ("Landowner") hereby grant access to my property at (land description) _____ ("Property") to the individual described below ("Visitor"), for the following date(s): _____.

Name of Visitor: _____

Employer: _____

Address: _____

Phone: _____

Vehicle description: _____

License plate (state, #): _____

The purpose of this entry to the Property is: _____

By signing this document and entering the Property, the Visitor agrees to the following terms and conditions:

- 1. Scope of Entry.** The Visitor agrees that s/he will enter only the Property described above, on the dates listed above, for the purpose stated above, in compliance with the terms and conditions of this Agreement. The Landowner reserves the right to deny entry at any time, even after signing the Agreement. The Visitor must be accompanied at all times by the Landowner or the Landowner's representative, unless the Landowner waives this right explicitly in the Other Conditions stated below. To conduct cultural surveys, the Visitor must also be accompanied at all times by an appropriate tribal cultural representative, unless the Landowner waives this right explicitly in the Other Conditions stated below.
- 2. Notice.** The Visitor agrees to notify the Landowner at least 24 hours in advance of each entry to the Property that will take place under this Agreement.
- 3. Modification.** The Visitor acknowledges that the Landowner may modify this Agreement at any time. If the Visitor does not agree with any modification proposed by the Landowner, this Agreement will terminate immediately.

4. **Liability and Indemnification.** The Visitor hereby waives any claims against the Landowner that may arise out of the Visitor's entry onto the Property, and agrees to indemnify and hold harmless the Landowner for any claims made by others against the Landowner in relation to Visitor's activity on the Property. The Visitor agrees to make prompt payment for any damage caused to the Landowner's property. The Visitor acknowledges that future access will be conditioned on prompt payment for any damage done.

5. **Termination.** The Visitor agrees that any violation by the Visitor of this agreement immediately terminates the Visitor's temporary right of entry and renders the Visitor's presence on the Property criminal trespass under Montana law. The Visitor acknowledges that the Landowner may terminate this agreement at any time.

Other Conditions: _____

Date: _____

Landowner name (printed): _____

Landowner signature: _____

Visitor name (printed): _____

Visitor signature: _____