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Organization: Baumstark Braaten Law Partners on behalf of Colstrip Alternative Landowners Group

State: Montana

Agency: Surface Transportation Board

Initiative: Tongue River Railroad

Submission Text

Comments presented on behalf of the Colstrip Alternative Landowners Group are attached.

Tongue River Railroad
Draft Environmental Impact Statement Comments
On behalf of Colstrip Alternative Landowners Group
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Q&A 1 – It is disingenuous to claim that this isn't the same proceeding kept alive since the 1980s by the applicant's creative maneuvers, and it is outrageous that affected landowners and tribal members should have spent most of their lives fighting such a misguided project. After TRRC failed to build the first line approved in 1986, or the second route approved in 1996, or the third route in 2007, the agency should have called a halt to this decades-long abuse of process. The depression of property values alone represents significant damages to the landowners, let alone the landowners' deferral of business decisions, time, money, and emotional distress in fighting this project for over thirty years.

Q&A 2 – Is the traffic estimate enforceable? What if it turns out to be far greater? Will the landowners be entitled to additional compensation? Is there any limit on use of the line? If other commodities may be carried, what limits exist on the easement? Will they be plainly stated? Can TRRC run a pipeline or fiber optic lines, lease communication towers in the ROW for third party communication services, etc? How will landowners be compensated for loss of income they might have realized from negotiating for additional uses of the ROW, if STB fails to put proper limits on it? The landowners have serious concerns about future economic losses resulting from an overbroad easement and request clarification.

Q&A 3 – Landowners question the seriousness of OEA's consideration of route alternatives other than the Colstrip Alternative in light of the relative insignificance of OEA's environmental and cultural review of the other alternatives. OEA appears to have made selection of the Colstrip Alternative a foregone conclusion while effectively abandoning the Ashland-Decker Alternative that would cross land owned by Tongue River Railroad investor Forrest Mars.

Q&A 5 – Projected adverse noise impacts in Fargo, ND and Willmar, MN ignore the likelihood that most of the Otter Creek coal would travel west, through cities such as Billings, MT, where the railroad passes through the central business district, within feet

of apartment buildings, restaurants, and other commerce. Many cities farther west would also be negatively affected. The DEIS improperly ignores the possibility that expanded West Coast shipping capacity may increase rail traffic westward out of the Powder River Basin.

Did the air modeling contemplate rail traffic up to the maximum feasible use of the line? Up to the maximum use of a rail line expanded to serve the maximum level of mining activity contemplated in the DEIS?

Q&A 6 – If “coal from the Tongue River area would replace some of the coal and other fossil fuels already being consumed,” “most of the traffic from the proposed rail line would displace coal trains from other places,” and “the total volume of coal trains that would move to ports in the Pacific Northwest from the Powder River Basin would be the same regardless of whether or not the proposed railroad is approved and constructed” (Q&A 12), why is this project needed? Will it not simply displace production and jobs elsewhere, perhaps in Rosebud County itself?

Q&A 8 – The DEIS states: “TRRC would design the right-of-way fence to allow movement of wildlife, including big game, across the right-of-way.” Will this be an enforceable permit condition? How will such a condition be enforced?

The DEIS states: “If the Board were to approve the proposed rail line, TRRC would consult with the county weed districts for Rosebud, Big Horn, Custer, and Powder River Counties to develop a program to minimize the introduction and spread of noxious weeds. This program could include construction measures such as the use of sterile ballast, weed-free seed straw, mulching, and hydroseeding materials.” Will any of this be an enforceable permit condition?

The DEIS states: “TRRC would design the proposed rail line to maintain floodplain connectivity. TRRC would consult with county floodplain administrators when designing bridge crossings of streams and the Tongue River.” Will these be enforceable permit conditions?

Q&A 10 – The Colstrip Alternative Landowners Group is aware of only the most cursory efforts by OEA’s consultants to interview a few landowners. See attached Archaeologist’s Report for other problems with OEA’s cultural resource survey.

Q&A 11 – The DEIS states: “TRRC would install cattle passes and private at-grade crossings to help cattle move across the right-of-way where properties have been divided. TRRC would work with landowners to identify appropriate locations for these crossings.” Will these be enforceable permit conditions? What will happen if TRRC and landowners disagree on appropriate location and design for crossings?

S.2.1.1 The scoping process was inadequate due to TRRC’s December 2012 redesignation of its preferred alternative. The Colstrip Alternative Landowners request a reopening of the scoping process including additional public hearings.

S.4.1 This section concedes that “Tongue River coal, with its lower transportation and production costs, would primarily displace other Powder River Basin coal destined for markets in the Upper Midwest” and “the same amount of rail traffic would flow from the Powder River Basin to the Pacific Northwest if coal export capacity is expanded, with or without the proposed rail line.” The Landowners have difficulty perceiving necessity in this situation. They also question the projection of “lower transportation costs” for a mine that will have to recover through its commodity pricing the full cost of building a new railroad. The assertion that Midwestern markets will continue to consume significant quantities of western coal is increasingly dubious. Coal’s power generation market share has tumbled in recent years and continues to contract.¹

S.4.3 The Landowners request a breakdown of percentage of total area accessed along each alternative, to provide a more accurate understanding of comparative impact.

S.4.4.1 The Landowners dispute OEA’s conclusion that air quality “impacts would be negligible.” The reason why railroad operation will not violate national air quality standards is that the air in much of the study area is currently pristine. The air quality data presented suggests that local residents will experience noticeable degradation of air quality, just not enough to violate federal standards, yet nowhere does the agency analyze projected compliance with federal Prevention of Significant Deterioration standards. As the DEIS states, “Because the proposed rail line would not be a major stationary source, it is not subject to PSD; however, the PSD increments can be used as thresholds to indicate whether further analysis of air quality impacts may be warranted.” The landowners request such an analysis.

Chapter 1 – The statement of purpose and need frames the project in such a way that the No Action Alternative could never adequately serve the purpose. The No Action Alternative might serve a more broadly-framed purpose, such as providing for the nation’s energy needs, as well as or better than the Tongue River Railroad. The Landowners request that the agency revisit the statement of purpose and need to consider open-ended language that does not lead inexorably to the applicant’s ends.

Chapter 2 – Regulations require the agency to designate its preferred alternative or alternatives in the DEIS:

Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§1502.15) and the Environmental Consequences (§1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form,

¹ “U.S. coal power generation stayed on top of natural gas in June: EIA,” *Platts* (Aug. 26, 2015) <http://www.platts.com/latest-news/coal/houston/us-coal-power-generation-stayed-on-top-of-natural-21030440>.

thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

- (a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
- (b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.
- (c) Include reasonable alternatives not within the jurisdiction of the lead agency.
- (d) Include the alternative of no action.
- (e) **Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.**
- (f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

40 C.F.R. § 1502.14. Chapter 2 refers repeatedly to TRRC's Preferred Alternative but never states the agency's preference. Is the agency abdicating its decision-making role in favor of TRRC's foregone conclusion on the preferred alternative? Or has the agency failed to identify its preferred alternative?

Table 2-2 The Landowners challenge the estimated width of the Colstrip Alternative ROW. They estimate that a much wider ROW will be necessary in some areas. For example, just north of Ashland, where the route runs between the Tongue River and sharply rising buttes, a much wider ROW will be necessary to keep the railroad high enough not to dam the flood plain in a number of places. Creek crossings will take broader right of way access than identified during wildlife and cultural surveys. The landowners brought these concerns to the attention of consultants during the survey process, but they do not seem to have been incorporated into design considerations in the Draft EIS.

2.2.5 Will landowners be compensated through the condemnation valuation process for fill material taken from the ROW?

2.2.8 When will the "final design and permitting process" take place? Will landowners have any input on or control over the kind of facilities they will be forced to use on their land? The culverts proposed along the Colstrip Alternative will be very detrimental to working cattle. The agency has failed to solicit landowner input on livestock underpass design.

2.2.11 Will road relocations require further condemnation of private property?

3.5.4.1 The lack of detail about Tongue River bridges creates concerns about how they will affect traffic, waterways, fisheries, livestock movement, and other aspects of daily life.

4.4.2.4 Uses a monitor at Theodore Roosevelt National Park, over 200 miles away, for acid deposition monitoring. This is inadequate. The landowners request new monitoring using more and closer receptors.

5.2-14 “All exported Tongue River coal would displace other Powder River coal that otherwise would have been exported rather than incrementally adding to the total tonnage of coal exported.” Again, this raises doubts about the need for the rail line. This project only shifts coal production from one part of the Powder River Basin to another, at the cost of significant impacts to people, wildlife, and environmental and cultural resources in the project area. Every local impact is avoided by the NAA, while the net impact on US coal production and exports of building the railroad is negligible. The benefit of the Tongue River Railroad accrues to only a handful of private investors, not the public. Landowners request more emphasis on this reality in analysis of the No Action Alternative.

5.2-19 “During mine reclamation, soil and vegetation replacement occurs as sections of the mine are depleted of coal and no longer actively mined, rather than occurring after mining for the entire tract is completed.” This assumption is inconsistent with practices at other Powder River Basin mines, where reclamation waits for years after basic post-mining regrading. Please provide sources for this assumption or recalculate based on actual practices.

5.2.4.5 “The results are presented in **Table 5.2-17** and show that, depending on the scenario, net accumulated life-cycle GHG emissions from 2018 to 2037 could be slightly greater (1.7 MMTCO₂e) under the No-Action Alternative than under the proposed rail line or they could be lower by up to 81 MMTCO₂e.” We find it difficult to believe that *not* building the rail line and mining the coal could somehow increase life cycle greenhouse gas emissions. This conclusion is absurd on its face and damages the credibility of the entire greenhouse gas analysis.

5.2.5.6 The DEIS notes that federal climate rules “could lead to a doubling in coal unit retirements and triple energy efficiency” by 2030, but includes no projections about how that eventuality might affect utilization of the Tongue River Railroad. If the railroad were idled midway through its anticipated useful lifetime due to lack of demand for coal, it would significantly alter the cost-benefit analysis for its construction. The landowners request analysis of this entirely possible scenario.

6.3.3 The landowners, who are cattle ranchers, are concerned that the agency analysis of human health and ecological impacts of coal dust does not include any data on impacts to livestock. Cattle in particular may spend large amounts of time in close proximity to the rail line. The landowners request data on impacts to cattle from prolonged coal dust exposure, and remind the agency that cattle and the people who work them have unique value in American history and identity. As Wallace Stegner put it, “I have known enough range cattle to recognize them as wild animals; and the people who herd them have, in the wilderness context, the dignity of rareness; they belong on the frontier, moreover, and

have a look of rightness.” They are more than specks on a landscape to be censused, which is all the agency has done here.

Chapter 7 The landowners remind the agency that this is cattle ranching country. In the chapter on noise and vibration, there is a conspicuous lack of any analysis of the effects of noise and vibration on livestock. A quick Google search reveals a scientific literature on the sensitivity of cattle to noise and vibration. For example, a 2000 study in the *Journal of Animal Science* states: “Cattle and horses have ears that are more sensitive than human ears. They are especially sensitive to high-frequency sounds (Heffner and Heffner, 1983; Grandin 1996; Smith, 1998). Therefore, noises that are a whisper to humans are quite audible to cattle.”² It is only common sense to conclude that cattle and horses will be more affected by construction and rail noise than humans in the study area will be. The landowners also draw the agency’s attention to the type of cattle grazed in the area, many of which are less domesticated than other breeds after many generations on the open range of Montana. These cattle react more like wild animals than dairy cows to any perceived threat and will be extremely difficult to handle in proximity to construction and railroad operations.

The landowners request that the agency provide analysis of the impact of noise and vibration on the primary economic activity in the area of the proposed rail line: cattle ranching. The lack of such analysis suggests that the agency suffers from either lack of comprehension of or interest in the rail line’s economic impact on cattle ranching.

The landowners also request third party inspection of residences and outbuildings to establish a baseline for structural integrity within 16 miles of any construction blasting, the distance at which prior blasting in the area caused severe structural damage and water contamination.³

8.2.4.1 and 8.2.4.3 Rail construction *will* introduce noxious weeds. The rail line will spread leafy spurge and other noxious weeds from the Tongue River valley throughout the route. Such weed infestations are devastating to grazing land and agricultural productivity. There is no discussion of the economic impact of noxious weed infestation reasonably anticipated from construction activities. How will landowners be compensated for the cost of fighting noxious weeds introduced by the railroad? Landowners request such analysis.

² “The relationship between reaction to sudden, intermittent movements and sounds and temperament.” J. L. Lanier, T. Grandin, R. D. Green, D. Avery, and K. McGee. *J. Anim. Sci.* 2000.78:1467-1474

<http://www.grandin.com/references/cattle.sounds.sensitivity.html>.

³ “Colstrip companies paying \$25M in water lawsuit,” Linda Halstead-Acharya, *Billings Gazette* (May 2, 2008) http://billingsgazette.com/news/state-and-regional/montana/colstrip-companies-paying-m-in-water-lawsuit/article_82e37e6c-8687-5717-9f0c-c021c6dcda17.html.

8.2.4.4 In light of the fact that firefighting in the affected region is handled by volunteers, the landowners request a condition requiring TRRC to be wholly responsible for the firefighting response required by any wildfire caused by its operations, so that no additional burden or danger is placed on volunteer firefighters. The landowners also request that TRRC's wildfire management plan be distributed for public review and comment prior to its inclusion in the Final EIS. Landowners also request a permit condition that the railroad be strictly liable for damages from wildfires caused by railroad operations, with damages payable in the same calendar year as the fire.

Landowners question the conclusion that "wildfire risk along any build alternative would be low," followed as it is by the fact that "(i)n 2012, three fires occurred in the study area between Brandenburg and Ashland. The Big John, Sand Creek, and Ash Creek fires burned a combined 269,984 acres; 114,933 acres overlapped 13 percent of the 4-mile wildlife study area (U.S. Forest Service 2013)." **8.3.3.** Such massive recent wildfires in the project area suggest a much higher risk than the agency acknowledges. The landowners request an analysis of wildfire risk that takes into account this data.

8.3.4.1 The analysis of impacts to wildlife points out many impacts that might also harm domestic livestock, such as "increased noise from train traffic and maintenance activities, changes in fire regime, potential spills and leaks of petrochemicals or other toxic substances used for maintenance, and vegetation maintenance (physical and chemical) in the right-of-way," yet does not include data on livestock. The landowners request analysis of potential impacts on domestic livestock of all factors that might affect wildlife.

Table 9.2-4 Landowners request specifics about which surface waters will have bridges, corrugated metal pipe, structural plate pipe, or other drainage structures. The landowners have detailed knowledge of the drainage on their land and can advise on the type of drainage required if given sufficient information. This table is insufficient for the landowners to evaluate the adequacy of bridges and drainage structures.

9.2.4.2 The landowners request charts representing the number of impacts to surface waters *per mile* along each route, to provide an understanding of the severity of impacts in localized areas.

9.3.4.2 How will landowners be compensated for closure of groundwater wells in the right of way in the event that replacement wells provide less utility? How will landowners be compensated for loss of wells with senior water rights? The landowners would also like to know where TRRC proposes to "negotiate" for water rights, given the fact that no water rights are for sale in the area and tribes are challenging existing water rights. The landowners have experienced diminishing well volume in recent years and have serious concern about lower-performing replacement wells. To the extent that water is necessary for constructing and operating the rail line, is the project feasible at all if water is simply not available?

9.4.3.1 This section states that Tongue River flooding has “not reached major flood status,” a conclusion inconsistent with photographs forwarded to the agency by the Colstrip Alternative landowners group in spring 2014, showing roads closed, houses and outbuildings partially submerged and cut off by floodwaters, a bridge washed out, and drainage culverts overtopped by 2014 Tongue River flooding in and near Ashland, MT, along the proposed Colstrip Alternative. The photos are still available at flickr.com in the Tongue River Railroad Landowners group. The landowners request that the agency review the photos and reconsider its conclusions regarding the severity of Tongue River flooding.

Table 9.4.1 The landowners request that the agency correct this table to reflect 2014 flooding, more than a year before issuance of the Draft EIS, and include statistics for Ashland, MT, where a rail line would have a direct impact on the floodplain.

9.4.4.2 The analysis of floodplain build impacts excludes consideration of residences and other structures within each affected floodplain, which may be negatively affected by aggravated flooding caused by a rail line. The landowners request a graph with this information.

Chapter 10 The Visual Impacts analysis places inadequate emphasis on the value of the landscape in this area, which remains largely untouched since first contact by local tribes with frontier explorers. We include the full text of Wallace Stegner’s 1960 “Wilderness Letter,” written to the Outdoor Recreation Resources Review Commission, as a reminder to the agency of the importance of such places to the American soul, and their increasing rarity.

Los Altos, Calif.

December 3, 1960

David E. Pesonen
Wildland Research Center
Agricultural Experiment Station
243 Mulford Hall
University of California
Berkeley 4, Calif.

Dear Mr. Pesonen:

I believe that you are working on the wilderness portion of the Outdoor Recreation Resources Review Commission's report. If I may, I should like to urge some arguments for wilderness preservation that involve recreation, as it is ordinarily conceived, hardly at all. Hunting, fishing, hiking, mountain-climbing, camping, photography, and the enjoyment of natural scenery will all, surely, figure in your report. So will the wilderness as a genetic reserve, a scientific yardstick by which we may measure the world in its natural balance against the

world in its man-made imbalance. What I want to speak for is not so much the wilderness uses, valuable as those are, but the wilderness idea, which is a resource in itself. Being an intangible and spiritual resource, it will seem mystical to the practical minded--but then anything that cannot be moved by a bulldozer is likely to seem mystical to them. I want to speak for the wilderness idea as something that has helped form our character and that has certainly shaped our history as a people. It has no more to do with recreation than churches have to do with recreation, or than the strenuousness and optimism and expansiveness of what the historians call the "American Dream" have to do with recreation. Nevertheless, since it is only in this recreation survey that the values of wilderness are being compiled, I hope you will permit me to insert this idea between the leaves, as it were, of the recreation report. Something will have gone out of us as a people if we ever let the remaining wilderness be destroyed; if we permit the last virgin forests to be turned into comic books and plastic cigarette cases; If we drive the few remaining members of the wild species into zoos or to extinction; if we pollute the last clear air and dirty the last clean streams and push our paved roads through the last of the silence, so that never again will Americans be free in their own country from the noise, the exhausts, the stinks of human and automotive waste. And so that never again can we have the chance to see ourselves single, separate, vertical and individual in the world, part of the environment of trees and rocks and soil, brother to the other animals, part of the natural world and competent to belong in it. Without any remaining wilderness we are committed wholly, without chance for even momentary reflection and rest, to a headlong drive into our technological termite-life, the Brave New World of a completely man-controlled environment. We need wilderness preserved--as much of it as is still left, and as many kinds--because it was the challenge against which our character as a people was formed. The reminder and the reassurance that it is still there is good for our spiritual health even if we never once in ten years set foot in it. It is good for us when we are young, because of the incomparable sanity it can bring briefly, as vacation and rest, into our insane lives. It is important to us when we are old simply because it is there--important, that is, simply as an idea.

We are a wild species, as Darwin pointed out. Nobody ever tamed or domesticated or scientifically bred us. But for at least three millennia we have been engaged in a cumulative and ambitious race to modify and gain control of our environment, and in the process we have come close to domesticating ourselves. Not many people are likely, any more, to look upon what we call "progress" as an unmixed blessing. Just as surely as it has brought us increased comfort and more material goods, it has brought us spiritual losses, and it threatens now to become the Frankenstein that will destroy us. One means of sanity is to retain a hold on the natural world, to remain, insofar as we can, good animals. Americans still have that chance, more than many peoples; for while we were demonstrating ourselves the most efficient and ruthless environment-busters in history, and slashing and burning and cutting our way through a wilderness continent, the wilderness was working on us. It remains in us as surely as Indian names remain on the land. If the abstract dream of human liberty and human

dignity became, in America, something more than an abstract dream, mark it down at least partially to the fact that we were in subdued ways subdued by what we conquered. The Connecticut Yankee, sending likely candidates from King Arthur's unjust kingdom to his Man Factory for rehabilitation, was over optimistic, as he later admitted. These things cannot be forced, they have to grow. To make such a man, such a democrat, such a believer in human individual dignity, as Mark Twain himself, the frontier was necessary, Hannibal and the Mississippi and Virginia City, and reaching out from those the wilderness; the wilderness as opportunity and idea, the thing that has helped to make an American different from and, until we forget it in the roar of our industrial cities, more fortunate than other men. For an American, insofar as he is new and different at all, is a civilized man who has renewed himself in the wild. The American experience has been the confrontation by old peoples and cultures of a world as new as if it had just risen from the sea. That gave us our hope and our excitement, and the hope and excitement can be passed on to newer Americans, Americans who never saw any phase of the frontier. But only so long as we keep the remainder of our wild as a reserve and a promise--a sort of wilderness bank. As a novelist, I may perhaps be forgiven for taking literature as a reflection, indirect but profoundly true, of our national consciousness. And our literature, as perhaps you are aware, is sick, embittered, losing its mind, losing its faith. Our novelists are the declared enemies of their society. There has hardly been a serious or important novel in this century that did not repudiate in part or in whole American technological culture for its commercialism, its vulgarity, and the way in which it has dirtied a clean continent and a clean dream. I do not expect that the preservation of our remaining wilderness is going to cure this condition. But the mere example that we can as a nation apply some other criteria than commercial and exploitative considerations would be heartening to many Americans, novelists or otherwise. We need to demonstrate our acceptance of the natural world, including ourselves; we need the spiritual refreshment that being natural can produce. And one of the best places for us to get that is in the wilderness where the fun houses, the bulldozers, and the pavement of our civilization are shut out.

Sherwood Anderson, in a letter to Waldo Frank in the 1920s, said it better than I can. "Is it not likely that when the country was new and men were often alone in the fields and the forest they got a sense of bigness outside themselves that has now in some way been lost.... Mystery whispered in the grass, played in the branches of trees overhead, was caught up and blown across the American line in clouds of dust at evening on the prairies.... I am old enough to remember tales that strengthen my belief in a deep semi-religious influence that was formerly at work among our people. The flavor of it hangs over the best work of Mark Twain.... I can remember old fellows in my home town speaking feelingly of an evening spent on the big empty plains. It had taken the shrillness out of them. They had learned the trick of quiet...."

We could learn it too, even yet; even our children and grandchildren could learn it. But only if we save, for just such absolutely non-recreational, impractical, and

mystical uses as this, all the wild that still remains to us. It seems to me significant that the distinct downturn in our literature from hope to bitterness took place almost at the precise time when the frontier officially came to an end, in 1890, and when the American way of life had begun to turn strongly urban and industrial. The more urban it has become, and the more frantic with technological change, the sicker and more embittered our literature, and I believe our people, have become. For myself, I grew up on the empty plains of Saskatchewan and Montana and in the mountains of Utah, and I put a very high valuation on what those places gave me. And if I had not been able periodically to renew myself in the mountains and deserts of western America I would be very nearly bughouse. Even when I can't get to the back country, the thought of the colored deserts of southern Utah, or the reassurance that there are still stretches of prairies where the world can be instantaneously perceived as disk and bowl, and where the little but intensely important human being is exposed to the five directions of the thirty-six winds, is a positive consolation. The idea alone can sustain me. But as the wilderness areas are progressively exploited or "improved", as the jeeps and bulldozers of uranium prospectors scar up the deserts and the roads are cut into the alpine timberlands, and as the remnants of the unspoiled and natural world are progressively eroded, every such loss is a little death in me. In us.

I am not moved by the argument that those wilderness areas which have already been exposed to grazing or mining are already deflowered, and so might as well be "harvested". For mining I cannot say much good except that its operations are generally short-lived. The extractable wealth is taken and the shafts, the tailings, and the ruins left, and in a dry country such as the American West the wounds men make in the earth do not quickly heal. Still, they are only wounds; they aren't absolutely mortal. Better a wounded wilderness than none at all. And as for grazing, if it is strictly controlled so that it does not destroy the ground cover, damage the ecology, or compete with the wildlife it is in itself nothing that need conflict with the wilderness feeling or the validity of the wilderness experience. I have known enough range cattle to recognize them as wild animals; and the people who herd them have, in the wilderness context, the dignity of rareness; they belong on the frontier, moreover, and have a look of rightness. The invasion they make on the virgin country is a sort of invasion that is as old as Neolithic man, and they can, in moderation, even emphasize a man's feeling of belonging to the natural world. Under surveillance, they can belong; under control, they need not deface or mar. I do not believe that in wilderness areas where grazing has never been permitted, it should be permitted; but I do not believe either that an otherwise untouched wilderness should be eliminated from the preservation plan because of limited existing uses such as grazing which are in consonance with the frontier condition and image.

Let me say something on the subject of the kinds of wilderness worth preserving. Most of those areas contemplated are in the national forests and in high mountain country. For all the usual recreational purposes, the alpine and the forest wildernesses are obviously the most important, both as genetic banks and as

beauty spots. But for the spiritual renewal, the recognition of identity, the birth of awe, other kinds will serve every bit as well. Perhaps, because they are less friendly to life, more abstractly nonhuman, they will serve even better. On our Saskatchewan prairie, the nearest neighbor was four miles away, and at night we saw only two lights on all the dark rounding earth. The earth was full of animals--field mice, ground squirrels, weasels, ferrets, badgers, coyotes, burrowing owls, snakes. I knew them as my little brothers, as fellow creatures, and I have never been able to look upon animals in any other way since. The sky in that country came clear down to the ground on every side, and it was full of great weathers, and clouds, and winds, and hawks. I hope I learned something from looking a long way, from looking up, from being much alone. A prairie like that, one big enough to carry the eye clear to the sinking, rounding horizon, can be as lonely and grand and simple in its forms as the sea. It is as good a place as any for the wilderness experience to happen; the vanishing prairie is as worth preserving for the wilderness idea as the alpine forest. So are great reaches of our western deserts, scarred somewhat by prospectors but otherwise open, beautiful, waiting, close to whatever God you want to see in them. Just as a sample, let me suggest the Robbers' Roost country in Wayne County, Utah, near the Capitol Reef National Monument. In that desert climate the dozer and jeep tracks will not soon melt back into the earth, but the country has a way of making the scars insignificant. It is a lovely and terrible wilderness, such as wilderness as Christ and the prophets went out into; harshly and beautifully colored, broken and worn until its bones are exposed, its great sky without a smudge of taint from Technocracy, and in hidden corners and pockets under its cliffs the sudden poetry of springs. Save a piece of country like that intact, and it does not matter in the slightest that only a few people every year will go into it. That is precisely its value. Roads would be a desecration, crowds would ruin it. But those who haven't the strength or youth to go into it and live can simply sit and look. They can look two hundred miles, clear into Colorado: and looking down over the cliffs and canyons of the San Rafael Swell and the Robbers' Roost they can also look as deeply into themselves as anywhere I know. And if they can't even get to the places on the Aquarius Plateau where the present roads will carry them, they can simply contemplate the idea, take pleasure in the fact that such a timeless and uncontrolled part of earth is still there.

These are some of the things wilderness can do for us. That is the reason we need to put into effect, for its preservation, some other principle than the principles of exploitation or "usefulness" or even recreation. We simply need that wild country available to us, even if we never do more than drive to its edge and look in. For it can be a means of reassuring ourselves of our sanity as creatures, a part of the geography of hope.

Very sincerely yours,

Wallace Stegner

10.5.1.1 The projection “Rural viewers could have construction activities occurring adjacent to their homes and agricultural buildings or nearby, evoking a sense of invaded privacy” ignores the fact that the rail line will require removal of residences and outbuildings, a far greater “visual impact” than mere invasion of privacy.

11.2 The DEIS cites Council on Environmental Quality and Advisory Council for Historic Preservation 2013:13 as support for the statement: “The Section 106 process does not require agencies to identify and evaluate historic properties in the APE for all NEPA alternatives.” Based on this authority, the agency proposes to “determine the APE in consultation with the SHPO in accordance with 36 C.F.R. § 800.4 and the stipulations in the Programmatic Agreement” only in the event that “the Board licenses a particular build alternative”.

However, the quotation is taken out of context. It must be understood as part of a more comprehensive statement about Section 106 process:

Section 106 requires agencies to identify historic properties within the area of potential effects for the proposed undertaking. In practice, the preferred alternative in a NEPA review may be considered equivalent to the proposed undertaking under Section 106. Early in the Section 106 review process, the Federal agency determines the area of potential effects for its undertaking. The area of potential effects is the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The Section 106 process does not require agencies to identify and evaluate historic properties in the area of potential effects for all NEPA alternatives; however, the preferred alternative may not be selected until late in the NEPA review, or may change during that review. In addition, Section 106 may require additional identification of historic resources as part of an effort to develop and evaluate alternatives to the proposed undertaking to avoid or mitigate adverse effects. Agencies should therefore establish the schedule, geographic area, and specifications for specialized studies, including historic property surveys, for more than the preferred alternative when there are adverse effects, to have the information they need in each step of the NEPA and Section 106 processes.

Council on Environmental Quality and Advisory Council for Historic Preservation 2013:13. The passage does not allow the agency to wait until after issuing a license to “identify and evaluate historic properties” in the preferred alternative. In this case, the agency has not yet identified its preferred alternative. The Applicant’s choice of a preferred alternative has no official status. The agency has the responsibility of identifying its “preferred alternative or alternatives, if one or more exists, in the draft statement ... unless another law prohibits the expression of such a preference.” 40 C.F.R. § 1502.14(e). The agency has not done so.

11.3.3.1 The statement “OEA was granted access to approximately 51 percent of the archaeological and tribal resources APE (Figure 11-2, Table 11-2) and approximately 50

percent of the built resources APE (Figure 11-3, Table 11-2.)” may be accurate for all the alternative routes totaled together, but it is not accurate for the Colstrip Alternative, where landowners estimate that the agency had access to more than 90% of the route for cultural surveys. **Figure 11-2** supports this estimate, showing near-total coverage.

11.3.3.2 The landowners question the qualifications of archaeologists without region-specific experience. There are a number of highly qualified archaeologists who have worked for their entire careers in the area surveyed. Failing to retain one or more of these specialists suggests a lack of seriousness on the part of the agency.

The description of the survey timeline in this section and at **Table 11-3** exaggerates the amount of time spent actually surveying. Survey teams stayed in Sheridan, WY and worked the routes a maximum of about 5 hours each day due to their long commute. Also, the survey team chose to work during a season with high grass, making observation of the surface difficult.

11.4.2 The identification of potential National Register-eligible historic districts omits the Lee Community Historic District, in the path of the Colstrip Alternative, which has significant historical value to the local ranching community as well as sites of tribal significance.

12.2.4.4 Requiring TRRC to “negotiate” with landowners to avoid or minimize environmental impacts is a polite fiction. Most of the landowners do not want TRRC on their land and will be forced to accept terms imposed by a court. Such language does not qualify as legitimate “mitigation.”

12.3.3.2 The Highland Rim Properties, Inc. Block Management Area is portrayed incorrectly on Tongue River Road. It is actually located along the first two miles of Lay Creek precisely where the right of way is proposed. The State Recreation Areas and Facilities numbers are therefore understated and wrong. Landowners request review and correction of all statistics in this section.

Chapter 13 The landowners question the accuracy of cutting and earthmoving estimates along the Colstrip Alternative. No route map published to date illustrates the dramatic cuts that would be required to construct a rail line according to OSHA standards between the Tongue River and its bluffs near Ashland. The lack of information about that area, which would obviously be far more impacted than the DEIS projects, raises rational skepticism about the completeness and accuracy of the entire analysis. The landowners request specifics about cutting and earthmoving required for each alternative in terms such as depth of cuts into existing landforms and metric tons of earth to be moved, per mile, for each alternative.

Chapter 15 – The analysis of socioeconomic impacts fails to take into account jobs and economic activity elsewhere that would be displaced by a transfer of production to the Otter Creek Mine and Tongue River Railroad. If it is true that net greenhouse gas emissions would be roughly equal or even less with the No Action Alternative, then logic

dictates that reductions in economic activity will take place elsewhere to offset emissions associated with this project. The Landowners request analysis of the negative economic impact that would be felt at other coal mines as a result of construction of the Tongue River Railroad. Those impacts should then be credited as an economic benefit of the No Action Alternative, which would prevent those negative impacts at other sites.

15.5.1.1 Assumptions about local employment and spending are unsupported. There are few retail businesses in the project area, very few available housing units, and no guarantee that any local workers will be employed. Landowners request supporting data for these pro-railroad statements.

Any increased local population will negatively impact landowners. These adverse impacts are not discussed.

Table 15.5 refers to cattle values based on 2012 numbers. The 2015 market is up at least 50 to 60% over 2012, so the estimated financial impact is understated and wrong.

Table 15.9 The landowners request a table showing loss of farm income by category *per mile* for each alternative.

15.5.2.2 Landowners request statistics on displaced outbuildings as well as residences. Landowners also request data on the number of driveways (which can be very long in this area) blocked by the rail line, together with an analysis of financial and emergency service impacts to affected residents, including delays to emergency vehicles.

The estimate of one residence being displaced omits at least one residence (Barbara Stein residence near Ashland) on the Colstrip Alternative that the map shows being displaced. Residences affected by the ROW are undercounted. Residents within such close proximity will likely also be displaced.

15.5.4 Requiring TRRC to negotiate with landowners over certain impacts is problematic. What is TRRC's motivation to play fair, rather than just letting a court determine the minimum acceptable terms?

Figure 16-4 incorrectly places Ashland west of the Tongue River on the Northern Cheyenne reservation. Ashland is east of the Tongue River and west of Otter Creek.

18.4.1 Construction Projects – Tongue River Road Paving

Tongue River Road is currently a pleasant rural road. Landowners see no project-related reason to pave it and object to this unwanted “improvement” that will further increase traffic and speed-related accidents.

18.5.2 Please provide numerical support for the statement “The contributions from the proposed rail line, existing mines, and proposed and potentially induced mines to cumulative impacts would not result in exceedances of ambient air quality standards.”

18.5.6.1 Assumptions that “(r)eclamation occurs concurrently with mining” is inconsistent with reclamation practices common in the Powder River Basin, where many mined areas wait years for full reclamation. According to a 2013 *Scientific American* article, “Coal mining has disturbed more than 162,000 acres of land in Wyoming ... but only 4 percent of this land has gained final reclamation status with full restoration and legal release from the bond.”⁴ The landowners request an accurate, factually-supported statement of the timeline on which surface mined lands are currently reclaimed in the region.

18.5.6.2 In addition to the analysis of cumulative impacts on wildlife, the landowners request an analysis of cumulative impacts on livestock, including cattle and horses. The *Scientific American* article cited above also notes: “(o)n the range near roads and mines, ranchers report young cattle and horses can suffer from ‘dust pneumonia.’” The landowners request an analysis of the risk of such impacts to their livestock from all pollution sources associated with the rail line.

18.5.7.2 The landowners strongly object to OEA’s conclusion that “the direct impacts from the proposed rail line, when combined with impacts from past, present, and reasonably foreseeable projects and actions, would result in minor adverse cumulative impacts on groundwater.” Elsewhere in the Powder River Basin, coal mining on the scale contemplated in this DEIS has drained aquifers and rendered water supplies unsuited for domestic use.⁵ The agency’s conclusion is unsupported by evidence. Landowners request a hydrologic study showing potential impacts on area groundwater from anticipated surface mining.

Based on destruction of groundwater wells in the area from coal mine blasting at Colstrip, landowners also request a condition on the permit requiring TRRC to test all groundwater wells within 16 miles of the ROW to create a baseline for well performance prior to blasting and other construction and operation activities.

18.5.7.3 As noted above, the landowners do not believe that the agency has sufficiently evaluated floodplain impacts, including severe 2014 flooding left out of the data presented.

19.1 The landowners object that the agency cannot consider mitigation measures for impacts that have not yet been discovered due to the use of a Programmatic Agreement for the entire route, even areas where near-total access was granted, and the inadequate cultural resource survey.

19.2.1.1 The applicant’s “voluntary” transportation mitigation measures consist of a recitation of the applicant’s intent to obey applicable law. The landowners request a copy of the applicant’s internal Emergency Response Plan.

⁴ Gary Braasch, “Powder River Basin Coal on the Move,” *Scientific American* (Dec. 9, 2013) <http://www.scientificamerican.com/article/powder-rive-basin-coal-on-the-move/>.

⁵ *Id.*

19.2.2.1 The applicant’s “voluntary” air quality mitigation measures consist of a recitation of the applicant’s intent to obey applicable law.

19.2.4.2 MM-15 The landowners request an opportunity to review and comment on TRRC’s construction noise and vibration control plan prior to its approval by the agency.

19.2.5.1 VM-15 Landowners request that the agency require TRRC to compensate local government for full oversight of noxious weed control measures by the appropriate county Weed Coordinator.

VM-18 Landowners request an opportunity to review and comment on TRRC’s Fire Prevention Plan prior to its approval by the agency.

19.2.5.2 MM-23 Landowners request an opportunity to review and comment on TRRC’s reclamation plan prior to its approval by any agency.

MM-24 Landowners request an opportunity to review and comment on TRRC’s weed control plan prior to its approval by any agency.

MM-25 Landowners request an opportunity to review and comment on TRRC’s wildfire management plan prior to its approval by any agency.

19.2.6.1 VM-31 Landowners note that the Tongue River floodplain is unavoidable if the agency licenses the Colstrip Alternative and request greater detail about how TRRC proposes to cross the floodplain, in particular near Ashland, where severe flooding took place in 2014.

19.2.6.2 MM-50 Please clarify that “If project-related off-road construction activities are required beyond the right-of-way, access beyond the right-of-way shall be approved by the landowner” does not mean that landowners shall be required to approve access beyond the right-of-way if they do not wish to allow it. The language is confusing.

MM-54 “As possible” language raises concerns with landowners and should be removed. All wells lost to construction need to be replaced as a condition of the permit. The problem of loss of senior water rights remains unresolved.

19.2.7.2 MM-62 Landowners ask that the agency acknowledge the fact that “steeper cuts” to avoid degradation of natural features may not be possible under OSHA regulations and accepted engineering standards.

19.2.8.1 The applicant’s “voluntary” cultural resource mitigation measure consists of a recitation of the applicant’s intent to obey applicable law, including the terms of the agency’s permit: by definition involuntary.

19.2.8.2 MM-65 Landowners request third-party enforcement of cultural resource protection conditions. TRRC has a financial incentive to ignore as many cultural, archaeological, and paleontological resources as possible and should not be trusted to self-enforce.

19.2.13.1 MM-81 Landowners request timely public distribution of TRRC's quarterly reports to all parties that participated in the consultation process.

Chapter 20 It is simply stunning that a discussion of long-term productivity of the land completely omits any analysis of impacts to livestock. Cattle ranchers threatened with condemnation have brought evidence to the agencies over and over about the detrimental impacts they anticipate to their operations. The agency's total failure to consider – let alone seriously analyze – these impacts is a slap in the face to the people most affected by the proposal. The landowners request an analysis of the rail line's financial, operational, and lifestyle impacts on their cattle ranching operations.