

COMMENTS ON DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT
STATEMENT

STB Finance Docket No. 30186 (Sub-No.3)

Tongue River Railroad Company, Inc.-Construction and Operation-Western Alignment
Tongue River III-Rosebud and Bighorn Counties, Montana

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Good evening. My name is Dan Dutton and I own and operate a farm/ranch operation south of Belfry, Montana in Carbon County. I am here tonight because I believe and value private property rights as detailed in the Constitution of the State of Montana. I believe Article II, Section 3, when it says that Montanans have the right to a clean and healthful environment and that their rights include acquiring, possessing and protecting property. I also believe Article II, Section 17, when it says that no person shall be deprived of property without due process of law and Article II, Section 29, when it says that private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having first been paid to or paid into court for the owner. The development of the Tongue River Railroad (TRR) is a private property rights issue.

These proceedings notwithstanding, one way or another, the square peg known as the Tongue River Railroad will be forced into the round hole known as the Tongue River Valley and monopolistic greed will continue to be served at the expense of the people of Montana. The TRR, or some utility, will occupy a strip of land 130 miles long and 200-300 feet wide to fill a need already being filled by another railroad. Assuming that the TRR will eliminate the need for the rail service currently hauling coal from the Decker and Spring Creek mines and mines in the Gillette, Wyoming area (after all, isn't that why it is being built) this draft EIS does not address, as it must, the environmental impact of abandonment of the currently used rail lines.

In earlier public comments on this project, concerns were raised regarding easement versus fee title transfer of condemned private land for right-of-way (ROW) to the TRR. I do not see those concerns addressed in this draft EIS. Easement for a single use (the railroad) is the preferred method as opposed to fee transfer, as it gives the private landowner and the public protection against other unintended uses such as power transmission lines, pipelines, communication cables or lines, etc.

Much of the data in this draft EIS use to support environmental claims is outdated and needs to be updated. This draft EIS only minimally addresses the environmental conflicts

that will arise between the TRR activities and the development of coal bed methane (CBM). Mitigation measures in Section 5 do not adequately address TMDL's and changes in water flow relative to CBM development.

The reason for changing the already approved route of the TRR from the Four Mile Creek Alternative to the proposed Western Alignment is strictly economic. Any connection to environmental concerns is bogus, or at best, incidental.

Our democracy continues its rapid transformation to a plutocracy and state and federal governments embrace big business. With the state and federal governments embracing a collaboration with corporations and by relying on a voluntary approach to corporate responsibility in developments such as the TRR, the farmers and ranchers and all citizens of Montana are abandoned. We cannot rely solely on corporations for responsible development. Responsible development is first a societal, governmental and individual effort. Too often, the purpose of corporate responsibility is to avoid accountability mechanisms, especially those that affect the bottom line.

Early in my comments, I said that the development of the TRR was a private property rights issue. I have come to think that it is an issue of human rights and human justice. If one is of the libertarian mindset, businesses exist only to make money for their owners and that any diversion of managerial commitment to other activities, such as environmental concerns, is a breach of fiduciary responsibility. Further, if there are environmental or human rights problems arising from the profit making activities of the business, the resulting problems should be dealt with by tort law, meaning that the parties suffering the damages should sue the parties causing the damages. This will soon be played out in condemnation procedures. The enjoyment of human rights is not just about enforcing one's own rights but it is also about accepting the responsibility for respecting the rights of others.

Thank you.