



United States Department of the Interior

OFFICE OF THE SECRETARY
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Denver, Colorado 80225-0007



June 29, 2014

9043.1
ER 15/263

Ms. Victoria Rutson, Director
Office of Environmental Analysis
Surface Transportation Board
309 E Street SW
Washington, DC 20423

Dear Ms. Rutson:

The Department of the Interior (Department) has reviewed the Supplemental Draft Environmental Impact Statement (DEIS) for the for the Surface Transportation Board (Board), Office of Environmental Analysis (OEA), that analyzes the potential environmental impacts of the Tongue River Railroad Company's (TRRC) October 2012 revised application to the Board, requesting authority to construct and operate a rail line in southeast Montana. We offer the following comments provided by the U.S. Fish and Wildlife Service (USFWS).

GENERAL COMMENTS

The DEIS proposed action is approval of TRRC's proposal to construct and operate an approximately 42-mile rail line (the Colstrip Alternative) between Colstrip, Montana and the Ashland and Otter Creek areas, to transport low-sulfur, subbituminous coal from mine sites that could be developed in Rosebud and Powder River Counties, Montana, including the proposed Otter Creek Mine. The TRRC estimates that traffic on the proposed line would consist of approximately 7.4 trains per day to and from the Otter Creek mine (3.7 trains in each direction), but could be as high as 26.7 per day under the high coal production scenario. The DEIS analyzes the environmental impacts of 10 build alternatives and the No-Action alternative. Each of the build alternatives were determined to have adverse impacts on trust resources under the purview of the USFWS, including biological (minor adverse impacts) and wetland (adverse impacts) resources. Therefore, our review focused on the TRRC proposed Colstrip alternative, and the OEA developed Colstrip East alternative. The OEA included draft recommended mitigation measures in the DEIS that will be considered by the Board as potential conditions, should the Board grant TRRC authority to construct and operate the rail line.

Our response comments are authorized under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 et. seq.), Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.), as amended, Executive Order 13186 Responsibilities of Federal Agencies to Protect Migratory

Birds, Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668-668d, 54 Stat. 250), as amended, and the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.).

The effects, rationale, and determinations for listed and candidate species were included in a biological assessment (Appendix L), for which my staff has drafted a concurrence letter. The following comments are therefore limited to errors or discrepancies in the DEIS as compared to the biological assessment, with regard to species listed under ESA or candidate species, recommended modifications to cumulative effects pertaining to biological resources, and an addition to the OEA recommended mitigation measure for bald eagles.

SPECIFIC COMMENTS

8.5.3.1 Federally Listed, Proposed, and Candidate Species

p. 8.5-10 – Incorrectly states red knot (*Calidris canutus rufa*) and northern long-eared bat (*Myotis septentrionalis*) are species proposed for listing under ESA. These species are currently listed as threatened and may occur in one or more counties in the action area.

p. 8.5-11 – Table 8.5-2 should include red knot and northern long-eared bat where appropriate for Custer, Powder River, and Rosebud Counties.

These two species were correctly identified as threatened in the revised biological assessment received in the Montana USFWS office April 3, 2015. However, the biological assessment included in the DEIS (Appendix L) retains these errors.

Chapter 18 Cumulative Impacts

18.5.6 Biological Resources

18.5.6.2 Wildlife – p. 18-28

18.5.6.3 Fish – p.18-29

18.5.6.4 Special-Status Species – 18-32

In each of the three instances referenced above, in the final sentence of the closing summary paragraph, we recommend striking the term “minor”, such that in each case the sentence closes with, “...would result in ~~minor~~ adverse cumulative impacts on wildlife/fish/special-status species.”

The USFWS bases this recommendation on the information disclosed in the DEIS that in each case the scale (e.g., acres of potentially induced coal mines, or length of Tongue River Road paving), extent (e.g., acres of big game winter range, or length of stream), and frequency (e.g., number of raptor nests, grouse leks affected, or stream crossings) of cumulative impacts from construction and operation of any build alternative when added to past, present, and reasonably foreseeable future actions described in the DEIS would result in more than “minor” cumulative impacts. We do not disregard that these projects would have to comply with Montana Department of Environmental Quality and other state permits, the U.S. Army Corps of Engineers 404 permit process, and where applicable, approval by BLM-required mitigation measures. However, as described in Appendix U (Cumulative Impacts Analysis), while most cumulative

impacts are within two miles of the right-of-way, the geographic extent of the cumulative impacts study area encompasses all of Rosebud, Custer, Powder River, and Big Horn Counties.

19.2.5.2 OEA's Preliminary Recommended Mitigation

p. 19-14 – Special Status Species, Mitigation Measure (MM) 38. The Service recommends addition of a bullet statement specifying that if take of eagles or their nests is anticipated, TRRC will coordinate with the Service's Region 6 Migratory Birds Office to obtain a permit authorizing such take, in the course of constructing or operating the rail line. Additional information is available at <http://www.fws.gov/midwest/MidwestBird/EaglePermits/baeatakepermit.html> regarding this type of "non-purposeful take".

Appendix J Wildlife Resources and Special-Status Species

p. J-34 – Table J-3 incorrectly identifies the yellow-billed cuckoo (*Coccyzus americanus*) as a candidate species in the action area. Only the western population of yellow-billed cuckoo west of the continental divide in Montana is currently listed as threatened.

If you have further questions regarding these comments, please contact Jodi Bush at jodi_bush@fws.gov or 406-449-5225 ext. 205.

Sincerely,



Robert F. Stewart
Regional Environmental Officer

cc: Ken Blodgett