

ORIGINAL

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BEFORE THE  
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 30186 (SUB-NO. 3)

TONGUE RIVER RAILROAD COMPANY – CONSTRUCTION AND  
OPERATION – WESTERN ALIGNMENT

COMMENTS FOR THE SUPPLEMENTAL EVIDENCE  
PROVIDED BY THE TONGUE RIVER RAILROAD COMPANY

ENTERED  
Office of Proceeding:

NOV 12 2003

Part of  
Public Record

I am Mark Fix and I own a ranch about 20 miles from Miles City along the Tongue River. My ranch will be crossed by the proposed Tongue River Railroad.

It is difficult to respond to the supplemental evidence without the application. Was there a new application submitted with this supplemental evidence? It has been several years since the application was done. There were several parties added to the Parties of Record and I doubt if they have the application. I would suggest that the application be sent to all of the parties of record.

The last thing I recalled happening with the Tongue River Railroad (TRR) was the submittal of four-month reports on their progress. I would suggest that a copy of these reports be sent to all of the parties of record to update them on the progress of the TRR.

To update you on the progress on my property there has been none. TRR does not have a right of way across my property and we have no agreement to proceed on a right of way. The laws have been changed in Montana and we can now have the right of way as an easement instead of by fee title. The law also states that we must be paid for each use of the right of way.

I have a question in regard to the Pro Forma Statement included in exhibit G. Under the title of income tax the number is zero. How can TRR earn millions of dollars and pay nothing in income taxes? Will there be any income tax generated for the state of Montana?

In Mike Gustafson's verified statement he states that all of the stock of TRRC is owned by TRR Limited Partnership. It seems to me that transferring this action to the

Corporation has not taken place if the Limited Partnership is still involved. It seems that the Liability is still limited for the Corporation with this arrangement. My understanding is that the Corporation needs to be in place to condemn property in the state of Montana so that if damages are done we as landowners and citizens have the right to go after the assets of the Corporation to seek just compensation for damages. It appears that this corporation has no backing. Would the Corporation or the Limited Liability Partnership pay us for right of way across our land? It appears from exhibit one that the Corporation is only worth \$50,000. It does not appear that this corporation has any backing to acquire right of way or pay damages. It also appears that 3 out of 4 of the board of directors (exhibit 1) are out of state. Can we assume that the income from TRR will primarily go to out of state interests?

On page 3 Mr. Gustafson states that Railco, LLC was established in place of The Pittsburg & Midway Coal Mining Co. I understand that Pittsburg & Midway got out of the picture because they were expending money with no return on their investment. It was reported that millions of dollars were spent. Mike Gustafson has had several investors over the years and they have left due to a lack of progress. This railroad is not a cost effective venture and I would alert any potential investors to beware. Will the cost effectiveness of the venture play into the Boards decision on this alternative?

On page 3 Mr. Gustafson states that the coal at Otter Creek is compliant coal for sulfur content. Mr. Gustafson does not tell you that the coal is high in sodium. The high sodium content makes the coal difficult to deal with and restricts its use in several coal plants. A recent article in the Miles City Star stated that there are only 15 of the 411 coal fired plants in the United States that can use the coal. I have attached this article to my comments for the Board to read.

On page 4 Mr. Gustafson states that Otter Creek development is essential. If the coal is essential why is Decker laying off workers at their existing mine? Why is one of the plants at Colstrip being shut down? If there were demand for the coal it seems that these businesses should be thriving. How can a new plant be financially viable when those that are in existence are struggling?

On page 6 Mr. Gustafson states that the Otter Creek Tracts cannot be developed without the TRR. I believe the Board has already authorized a permit to the Otter Creek mine in TRR I and TRR II. The only reason the line needs to be extended to Decker is to ship coal from the Decker Mine or Wyoming. The Western Alignment has nothing to do with development of Otter Creek. I advise the Board to look closely at Mike Gustafson's comments because there are several lies included in them.

On page 10 Mr. Gustafson states that TRR will be shipping coal from the Decker Mine. If Decker is laying off people, will the Decker Mine still be in existence when TRR is built? In Mr. Morey's statement at paragraph 3 he enforces the fact that Decker production is decreasing.

On page 10 Mr. Gustafson states that the coal will go to markets in the Pacific Northwest. Decker can already ship to markets in the Pacific Northwest now and they do not need the TRR to ship the coal. Mr. Morey's statement did not mention taking the coal to the Pacific Northwest. I did not see any projections done for sale of coal to the Pacific Northwest. It seems as though the lines are available to transport the existing coal to the Pacific Northwest. How could the TRR benefit any transport to the Pacific Northwest but the Otter Creek tracts?

I disagree with the comments made by Mr. Gustafson on page 11 regarding the Dakota Minnesota and Eastern (DM&E). I believe the mileage would be shorter for the Wyoming coal on the DME and therefore it would be cheaper to transport on the DME. There are also multiple railroads competing for business therefore keeping transportation costs down. It may even be beneficial for Decker to ship via the DME versus the TRR. Mr. Morrey states in his comments at 5 that the projections are done with 30 percent of the coal transported on the TRR coming from Wyoming. This is in direct contradiction to the statements Mr. Gustafson makes on pages 10 and 11.

Mr. Morrey states in paragraph 3 that new development will proceed in the area around the Decker Mines. Most of the areas he has talked about for future development are currently in coal bed methane (CBM) production. The coal cannot be developed until the CBM play is complete. The CBM developers are telling us that could take close to 20 years. It seems that the future development of coal in the Decker area will be shut down for that length of time.

In the revised attachment 1 provided by Mr. Leilich the fuel costs are listed. I noticed that the fuel has a note added that states that the fuel will be delivered at Miles City. There are currently no fuel dispensing facilities for locomotives in Miles City. Will there be additional data added to the supplemental EIS providing information about the fueling station? Wouldn't the trains be able to make it to Glendive or Mobridge to refuel?

I understand that the trains that go to Minneapolis on the Old Milwaukee route that is now owned by the Burlington Northern need to have a helper to go up the grade near Marmath, North Dakota. Would these helpers be on the trains going to the Otter Creek mine? Would there be a helper storage area planned for the Miles City area? Where would this area be in Miles City and will information regarding the area be provided in the supplemental EIS?

I am anxious to see the studies that TRR will provide in the supplement. I understand that the wildlife studies were never done for TRR I and TRR II.

I have been working on the Total Maximum Daily Load (TMDL) project. I am on the advisory committee for the TMDL's. I was talking with EPA recently about whether they have accounted for the loads that will be generated by the TRR. They said that they could only look at existing development to work on their models to determine if there is any assimilative capacity for degradation in the Tongue River. Montana has a limit set for sodium and salinity in the Tongue River now at the mouth and the TMDL process is

working to see if any further degradation can occur. EPA told me that it would be up to the Surface Transportation Board to assure that the TMDL's would not be violated with the TRR in the EIS that TRR will be providing. There are limits set for sodium and salinity and any development at Otter Creek may be prohibited because the discharge water from the Otter Creek Mines would flow down Otter Creek into the Tongue River. In addition to salinity impacts the massive amounts of soil moved in the Western Alignment will surely impair the Tongue River with sediment. It will expose a tremendous amount of land to erosion and potential flood impacts from the damming action of tributaries to the Tongue River. Will the TRR provide a supplement that will address the TMDL concerns?

The balance sheet of the railroad may look better with the Western Alignment but the costs to the farmers and ranchers along the Tongue River will be too high for this development. I believe that the construction costs for the Western Alignment are still too low. The amount of dirt and rock that will need to be moved is massive and I believe the estimates made to move it are too low. Have the soil tests that were done by TRR been submitted to the Surface Transportation Board?

We are under attack as farmers and ranchers along the Tongue River. The CBM industry wants to take 480 billion gallons of water from our aquifers over the next 20 years. The Programmatic EIS done for CBM states that the aquifers will not recharge in our lifetimes. How can we survive without house and stock water? The CBM industry wants to dump most of this water into the Tongue River and the high sodium and salt levels in the water will escalate the destruction of our irrigated soils. The Decker Mine has been dumping the same salty water into the Tongue since the 70's. Additional discharges from the Otter Creek development of Coal will also add to the destruction of our land. It seems that developers, like Mike Gustafson, intend to make an industrial corridor out of the Tongue River Valley. Agriculture provides over 2 billion dollars annually to the state of Montana. We are asking the Surface Transportation Board to make the right decision and deny any further action on the Western Alignment.

Under the penalties of perjury, I affirm the foregoing statement is true and correct as stated.

*Mark Fix* 11-10-03

Mark Fix  
HC 32 Box 4196  
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ATTACHMENT  
TO MARK  
FOR  
COMMENTS

# Developm't of Otter Creek coal years away

## Production at least a decade from now, developer says

By JOHN MALBERT  
Star Staff Writer

Although the Otter Creek tracts near the Tongue River south of Miles City have the potential to be the nation's next significant coal development, production is still at least a decade away, according to the president of the company that owns a big chunk of that coal.

Jerry Vaninetti, president of Great Northern Properties and Great Northern Power Development, told the Miles City Area Economic Development Council last week that Otter Creek coal, like much Northern Great Plains sub-bituminous coal, has a high sodium content. While it does a good job of meeting Clean Air Act standards for sulfur and other pollutants, the sodium content requires boilers specifically designed to burn that type of coal.

The coal that comes from the Becker and Spring Creek mines near Tongue River on Montana's southern border has virtually the same chemical makeup as Otter Creek coal, Vaninetti said. Of 411 power plants in the United States, 15 are designed to burn such high-sodium coal.

The demand from existing power plants is finite at about 20 million tons per year, he said, and much of that demand is currently being filled by the Decker and Spring Creek mines.

But as those mines play out in the next decade, Great Northern Power Development wants to be in a position to fill that market without interruption, he said.

Vaninetti said developing a coal-fired energy project requires a timeframe with a minimum of eight years. He urged the Miles City audience, "don't get your hopes up — but you know that."



However, recent measures in the 2003 Montana Legislature have been very helpful for Otter Creek development. A year ago, the State of Montana acquired extensive federal coal holdings at Otter Creek. Those holdings are interspersed with Great Northern's coal tracts in a checkerboard pattern, the legacy of the land grants Congress made to railroads in the second half of the 19th century. Vaninetti's company acquired the former railroad holdings in 1992.

So GNP and Montana each own about half a billion tons of coal in the Otter Creek area, he said. One of the things the Legislature did was to allow the state to consider joint leasing.

"That's far better than checkerboard leasing," Vaninetti said. "It lets the state as well as GNP get the full value of it. In this case, the state is half the development."

He also noted that the Legislature provided \$300,000 from a tight budget in inventory money, to drill for coal and geological samples, start archaeological surveys, and do baseline environmental analysis.

"The state would get minimal value if it leases unknown quantities," Vaninetti said. "We've spent untold millions over 20 years — we know what we've got."

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state can use the lessee's mine permit fund work. "We expect within the next year, year and a half, we will be ready for leasing," Vaninetti said, noting that they will consider both export by railroad and mine-mouth power generating plants. He said other companies, such as Kennicott and Wescon, are also interested in development in the Otter Creek area. While the demand for high-sodium coal is finite as long as

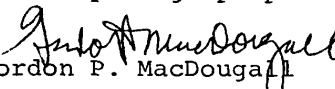
only 15 power plants out burn it, that demand could grow if new plants are built. But the state of the industry is such that any new plants will be built at the mine and export the electricity, rather than paying the freight to ship coal hundreds of miles. The market for Otter Creek-generated electricity would likely be Minnesota and Wisconsin, he said.

There is one legislative hurdle still to be dealt with, Vaninetti told the Milan City audience. Two years ago, the Legislature reduced the lease Coal Severance Tax for mines that will supply plants that provide power to Montana. That looked like an incentive, he said, but "we dug in, and found that once those plants got up and going, the Public Service Commission would set the rates. We don't see that as an incentive at all." He added that there are plans to persuade the next Legislature to come up with a better formula.

CERTIFICATE OF SERVICE

I hereby certify I have served a copy of the foregoing upon  
all parties of record by first class mail postage-prepaid.

Washington DC

  
Gordon P. MacDougall