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BEFORE THE

SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 30186

TONGUE RIVER RAILROAD COMPANY, INC. – RAIL CONSTRUCTION AND OPERATION – IN CUSTER, POWDER RIVER AND ROSEBUD COUNTIES, MT

TONGUE RIVER RAILROAD COMPANY'S REPLY TO PETITION TO REVOKE SUPPLEMENTAL APPLICATION

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Dated: January 28, 2013

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The Surface Transportation Board ("STB" or "Board") should deny the Petition to Revoke Supplemental Application (hereafter "Petition") filed on January 7, 2013 by Northern Plains Resource Council ("NPRC") and Rocker Six Cattle Company (hereafter collectively referred to as "NPRC"). Wrongly claiming that the Supplemental Application is inadequate, NPRC's Petition asks the STB to "revoke" Tongue River Railroad Company's ("TRRC") December 17, 2012 Supplemental Application to Construct and Operate a common carrier rail line between the Colstrip Subdivision of BNSF Railway Company ("BNSF") and the Ashland/Otter Creek area (hereafter "Application") and require that TRRC submit a "proper" application in a new proceeding.[1] The Petition cites no legal authority or precedent for the

[1] Petition at 3. NPRC's Petition contends at page 7 that the Board "rejected" TRRC's October 16, 2012 Application in its November 1, 2012 Decision. That is not true. The Board merely clarified its prior decision to make clear that it would review not only the environmental impacts of the TRRC proposal, but also its transportation merits. TRRC accordingly provided a fuller explanation in the December 17 Application of the public need for its proposed rail line and other information requested by the Board, while at the same time adjusting its preferred alignment based on information gathered by the time the December 17 Application was filed.

extraordinary request. There is none. In fact, the STB has already determined that the Application should be accepted and processed according to the procedural schedule applicable in this proceeding. *See Tongue River Railroad Company, Inc. – Rail Construction and Operation – in Custer, Powder River and Rosebud Counties, Mont.*, STB Docket No. 30186 (served Jan. 8, 2013).

The Petition, and the accompanying November 2012 Report of Power Consulting (hereafter "Power Report") and verified statement of NPRC witness Mr. Gerald W. Fauth III (hereafter "Fauth V.S.") instead raise a series of disjointed and inaccurate claims, none of which – either on its own or considered collectively – warrant the unusual relief they seek. TRRC's Application seeks authority to construct a common carrier rail line that is designed primarily to transport coal in the Ashland/Otter Creek area to an existing BNSF rail at Colstrip and from there to market. It is clear that NPRC does not want the railroad built either on the Colstrip routing or any other. However, NPRC offers no credible reason for the Board to take the extraordinary preemptive action of revoking the Application before the Board has had a chance to assess comments on it (due March 1, 2013); TRRC's reply to those comments (due April 15, 2013) and the Environmental Impact Statement ("EIS") that will be prepared by the Board's Office of Environmental Assessment ("OEA") in satisfaction of NEPA requirements.

The Petition claims that TRRC's Application is inadequate, incomplete and misleading primarily because it does not comport with NPRC's contention as to where the coal will go (it asserts that virtually all of the coal will be exported to Asia) and how much will be transported (it assumes a much greater annual tonnage relative to what is presently planned to be mined.) However, TRRC's Application accurately reports that the market for the coal will be based on market demands, that some of the coal may be exported, and that once full production is reached

20 million tons of coal will be transported from the Otter Creek mine, the only mine currently planned for the area served to the served by TRRC. Application, at 17, 20-21, 26-27, 30; *see also id.*, Verified Statement of William M. Rowlands, at 3, 4 (hereafter "Rowlands V.S."). Moreover, nothing in the Application precludes the STB from exploring, during the course of its environmental review, a variety of reasonable scenarios as to where the TRRC-transported coal might be destined and how much coal might be transported in the future, and assessing impacts based on those scenarios.

As TRRC will show below, the NPRC Petition is procedurally defective and substantively misguided. On these grounds, the Petition should be denied.

I. The Petition Should be Denied on Procedural Grounds

NPRC's Petition offers no legal basis on which the Board might "revoke" an application. It also cites no procedural deficiency with the Application that TRRC filed. The Board's January 8 Decision accepting the Application for filing underscores that there were no such deficiencies, and that the Application is sufficient to initiate the public comment portion of this proceeding and to proceed with the environmental review. No rules or precedents are cited by NPRC in support of the proposition that revocation (whatever that means in the context of an application that has already been filed and accepted) is an appropriate remedy that a party may seek when it is displeased with the contents of an application submitted under 49 U.S.C. §10901. Yet, that is precisely what NPRC is requesting.

The proper procedure for parties that have concerns about an application under section 10901 is to file comments addressed to the transportation merits (which are due under the adopted procedural schedule on March 1) and/or file comments with OEA on the scope of the environmental review, which NPRC has already done. In fact, NPRC has filed extensive scoping comments with OEA, which included a copy of its Petition.

NPRC's Petition is, in large measure, a scoping comment masquerading as a Petition to Revoke. The Fauth Statement is explicit on this point: "I will not address the merits of TRRC's revised proposal and the STB's broad public interest standard here. *My comments focus on the STB's Draft Scope of Study* and issues and impacts associated with TRRC's recent major change in the proposed preferred route set forth in" the Application. Fauth V.S. at 3 (emphasis added). In fact, the gist of the Fauth Statement is that OEA should study the environmental impacts of the coal transportation that Mr. Fauth and NPRC posit will take place were the TRRC line constructed.

TRRC urges the Board to reject NPRC's end run around the robust opportunities that the Board has provided NPRC and others to submit their comments on the merits and the scope of the environmental review in this proceeding. Its Petition should be rejected on procedural grounds as nothing more than a poorly disguised effort to get an additional bite at the apple, beyond that allowed by the procedural schedule in this proceeding. The Petition should also be rejected because the contentions made by NPRC do not justify rejection of the Application, as we discuss next.[2]

II. The NPRC Petition Should be Denied Because it Lacks Substantive Merit

Replete with factual inaccuracies and mischaracterizations of TRRC's Application (examples of which are noted and corrected below), the Petition presents no arguments that

[2] TRRC will further respond to NPRC's points on the transportation merits of the Application in Reply Comments that are due by April 15. That time frame will allow for a fuller response to arguments raised in the NPRC Petition and to comments from other parties that may be filed by the March 1 deadline. Here, we will here briefly address the major contentions made by NPRC and its consultants.

support the unusual request to "revoke" TRRC's Application and require a new proceeding. Because TRRC would submit and defend the same Application that it submitted on December 17, granting the relief NPRC has requested would accomplish nothing, other than the delay NPRC seeks. TRRC addresses each of the arguments raised in the Petition below and in the attached supporting verified statements of Steve Bobb, President of TRRC and BNSF Railway Company's Executive Vice President and Chief Marketing Officer (hereafter "Bobb V.S.") and Andrew Blumenfeld, Arch Coal, Inc.'s Vice President of Analysis and Strategy (hereafter "Blumenfeld V.S.").

A. There is No Merit to NPRC's Argument that the Differences Between TRRC's Current Rail Proposal and the Rail Alternatives Studied in the Previous TRRC Proceedings Support Revocation of the Application

NPRC argues that the alignment identified now as TRRC's preferred alignment in the Application, *i.e.* the Colstrip Alignment, is so different from the TRRC alignment approved for construction and operation by the Interstate Commerce Commission ("ICC") in the *TRRC I* proceeding in 1986[3] that it should not be considered in this docket. Petition at 8-9. The crux of NPRC's argument seems to be that the Board will not thoroughly review the transportation merits and environmental impacts of TRRC's proposed rail line unless the proposal is considered in a new proceeding. That premise is fundamentally incorrect. The STB has made it clear that it will conduct a full merits review and an altogether new environmental review of TRRC's proposed rail line in this proceeding. *See Tongue River Railroad Company, Inc. – Rail Construction and Operation – in Custer, Powder River and Rosebud Counties, Mont.*, STB Docket No. 30186 at 2 (served Nov. 1, 2012) ("We make it clear here that we reopened the

[3] Finance Docket No. 30186, *Tongue River R.R. – Rail Construction and Operation – In Custer, Power River and Rosebud Counties, MT* (ICC served May 9, 1986) (hereafter "1986 Decision").

Tongue River I proceeding to review in full what is now the entire Tongue River I line construction project. The Board's review will include not only the new environmental review of the entire construction project that will be prepared, but also an examination of the transportation merits supporting the entire Tongue River I line.") In response, TRRC submitted a new application on December 17 that sets forth, consistent with the Board's rules, the reasons why its construction and operation application should be granted under the applicable Section 10901 standard. Because the Board has reopened this proceeding and made it clear that it is undertaking a fresh look at the TRRC project, nothing (except delay) would be accomplished by initiating a new proceeding and starting over again.

NPRC claims that the geographic differences between the rail line previously approved in the TRRC I proceeding in 1986 and the rail line currently proposed by TRRC in the Application are so significant that they support NPRC's Petition to Revoke. Petition at 8-9. The rail line approved in 1986 would have been constructed between Miles City, MT and the Ashland/Otter Creek, MT area. The rail line currently proposed by TRRC, *i.e.* the Colstrip Alignment, would be constructed between the BNSF line known as the Colstrip Subdivision and Otter Creek/Ashland area.[4] TRRC explains in its Application that it has opted for the Colstrip Alignment based on further review of its relative advantages, including its much shorter length, its operational feasibility and its apparent environmental advantages. *See* Application, at 2-4; Bobb V.S. at 2.

[4] In multiple places, the Petition cites to what it claims is the caption in this proceeding – "Miles City to Ashland" – as support for its position that this proceeding is not the proper proceeding to analyze TRRC's current proposal. *See* Petition at 3, 8. This claim is puzzling since the caption cited in the Petition is not the caption of this proceeding. As the Board's recent decisions and TRRC's recent filings in this docket show, the caption of this proceeding is "Tongue River Railroad Company, Inc. – Rail Construction and Operation – In Custer, Power River and Rosebud Counties, MT".

What NPRC overlooks in its Petition, even though it was made clear in TRRC's Application, is that a routing via Colstrip was among the alternative alignments previously considered in the *TRRC I* proceeding. The Board notes this fact at footnote 7 in its January 8 Decision accepting TRRC's Application. A modestly different version of the alignment, known as the "Colstrip Alternative," was assessed in detail by the ICC in its Draft and Final Environmental Impact Statements ("EISs") in the original *TRRC I* proceeding and determined at that time to be among the feasible routes for the TRRC line. In addition, that Alignment was among the alignments that OEA identified prior to the December 17 Application for further review in the EIS to be prepared in this reopened proceeding, together with routings via Miles City that have been previously proposed. *See* STB Docket No. 30186, October 22, 2012 Notice of Intent to Prepare EIS and Draft Scoping Notice at 4 (providing that routes considered in TRRC I, including the Colstrip route, will be among those analyzed in the new EIS being prepared for this proceeding). A routing via Colstrip was also addressed at the public scoping meetings held by OEA in November 2012. *See* http://www.tonguerivereis.com/enviro_review.html (displaying map used at scoping meetings).

Because a rail line between Colstrip and the Otter Creek/Ashland area was previously analyzed by the ICC in the original *TRRC I* proceeding and the OEA previously stated its intent to analyze such a routing as an alternative in this reopened proceeding, TRRC's choice of that routing as its preferred alignment should come as no surprise to NPRC. The Board therefore should reject NPRC's argument that somehow TRRC's choice requires that this proceeding be restarted.[5] In fact, the Miles City alignments have not been removed from consideration in this proceeding and will be assessed as part of the NEPA process.

In addition, there will be ample opportunity for the public (including NPRC) to address the merits of the Colstrip routing during the EIS process and on the merits side of the case, including in comments due on March 1. For example, to the extent that Mr. Fauth may wish to argue that there are disadvantages to the Colstrip route such as engineering issues noted in the ICC's 1986 Final EIS in TRRC I, which he cites at page 13 of his Statement, he is free to do so. Likewise, TRRC will have an opportunity to show on reply that locomotive technology advances over the last several decades render outdated and irrelevant any concerns that somehow the Colstrip route is not feasible for an operational perspective. Bobb V.S. at 2. Likewise, if NPRC or others wish to point out environmental disadvantages to the Colstrip route versus other possible routings for the TRRC line, they are free to do so – although the absence of any such criticism in NPRC's Petition is notable.

B. NPRC's Contentions About the Destination for the Coal to be Transported By TRRC Do Not Warrant Revocation of the Application or a New Proceeding

NPRC also argues that a new proceeding is needed because the purpose of the line has "fundamentally changed" -- in the original TRRC I proceeding most of the coal transported by

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[5] NPRC grossly mischaracterizes the Application in this section of its Petition claiming that "Despite these profound geographic differences between the 1986 and 2012 rail lines, TRR informs the STB that the new proposal is '[N]o different that [*sic*] railroad approved in 1986.'" Petition at 8-9. In fact, a review of the full sentence in the Application that NPRC only partially quotes shows that the sentence was not addressing the route of the TRRC rail line. Rather, TRRC was explaining that the primary purpose of the TRRC rail line remains the same now as it did in the 1980s, which is true. The full sentence in the Application reads "The primary purpose of the TRRC rail line now proposed -- to facilitate the transportation of substantial coal resources that otherwise have no viable transportation alternatives -- is no different than the rail line approved for construction and operation by the Interstate Commerce Commission ("ICC"), the Board's predecessor, in the TRRC I proceeding in 1986." Application at 2. This is a fully accurate statement.

TRRC was predicted to move east to domestic electric utilities in the Upper Midwest, whereas now, according to NPRC, most of the coal transported by TRRC will be moving west to West Coast export facilities. Petition at 9-12. Putting aside NPRC's much too confident assessment as to the destination of the coal (this will be addressed below), what NPRC conveniently overlooks is that in terms of the public need for the TRRC line to transport coal from the Ashland/Otter Creek area to the national rail network, there is no difference at all between an alignment for the TRRC line via Colstrip versus an alignment via Miles City. The Colstrip Alignment will facilitate the transportation of the same coal that would be transported were the line to be built through Miles City, as originally proposed. And there is no meaningful mileage penalty for eastbound traffic using the Colstrip routing. *See* Bobb V.S. at 3; Blumenfeld V.S. at 3. Thus, the purpose to be served by the TRRC proposal has not changed by virtue of TRRC's preference for the Colstrip Alignment. For this additional reason, NPRC has failed to show that a new proceeding is warranted.

While NPRC argues that the Application is inaccurate or misleading in failing to acknowledge that the ultimate destination of the coal is one or more West Coast export facilities, it does not contend that there is no public need for the line. In fact, it claims that the TRRC line will transport even more coal than TRRC's prediction of what will be transported in the reasonably foreseeable future. Petition at 13-15. Thus, it is important to note that NPRC does not challenge that there is a demand for the transportation that TRRC proposes to provide on its rail line. (NPRC's current position on this issue is, interestingly, a complete turnaround from its prior position that there is no market for Ashland and Otter Creek coal and thus no public need. *See Tongue River Railroad Company, Inc. – Construction and Operation – Western Alignment*, STB Finance Docket No. 30186 (Sub-No. 3) (served Oct, 9, 2007) (hereafter "*TRRC III*

Decision") at 16-19 (rejecting NPRC's claims that Ashland area mines "may not develop" due to distance from markets and higher demand for Wyoming coal, and further rejecting claims that the sodium content of the coal will reduce its marketability)).

In short, whether there is a robust market for the coal that the TRRC line will transport in Asia (as NPRC now insists) or whether the coal may be used in a combination of domestic and export markets (which TRRC submits is more likely), is not particularly relevant in terms of the transportation merits of the proposal. TRRC and NPRC now both agree that there will be a public demand for the Otter Creek and Ashland area coal. The public need element of Section 10901 is thus not in dispute.

Further, NPRC cites no statutory or other requirement that the Board determine with certainty, for purposes of assessing the merits of a rail construction application, where the product carried by the applicant railroad will be transported. The Board neither regulates where rail cargo moves nor assesses the adequacy of rail construction applications based on whether it is more likely that cargo will move to point A rather than Point B. Thus, the focus of the Power Report and Mr. Fauth on where the coal will move (they claim that virtually all of it will move westbound for export to Asia) offers no basis for challenging the adequacy of the Application or initiating a new proceeding. Again, they do not challenge the proposition that there is a market for the coal.

For environmental review purposes, including downstream impacts on air quality and other resources, the Board may certainly make reasonable assessments as to where the rail traffic leaving the TRRC line might go. While the Application makes clear that TRRC is not in a position to know exactly what amount of traffic will move east versus west once it leaves the TRRC line, TRRC has no objection to OEA assessing reasonable alternative scenarios as to where the coal traffic may flow in its EIS. Given OEA's ability to do so, one is left to wonder what NPRC is concerned about.

Moreover, NPRC's contention that virtually all of the TRRC-transported coal will move westbound on BNSF lines to the Pacific Northwest (PNW) for export is open to serious question. TRRC's Application correctly recognizes that the coal market is dynamic and that the export market for coal mined in many different areas of the country is growing based on market demand overseas. The Application thus notes in several places that TRRC coal could be exported and could (as is the case for most Montana coal) be used for domestic power generation or for coal conversion projects. *See* Application at 20, 26-27; and attached Exhibit D at 2, Rowlands V.S. at 4. What percentage is exported and what percentage is used domestically will, as the Application states, be dictated by the market forces that are in play at the time (several years from now) when the Otter Creek mine and the railroad are fully permitted and become operational following development/construction. Between now and the time that the first shipment of coal moves over the TRRC line, factors such as the price of natural gas, the capacity of export facilities, and the availability of new technologies for using coal could have a significant bearing on the market for Otter Creek/Ashland coal. *See* Blumenfeld V.S. at 2-4. Thus, NPRC's exaggerated contention that virtually the only market for Ashland/Otter Creek coal is the export market is simply overblown, just as was NPRC's argument a few years ago in the *TRRC III* proceeding that there is no market at all for that coal.

There are additional reasons to doubt NPRC's certainty regarding the destination of the coal. As Mr. Blumenfeld notes, the PNW export facilities in Washington and Oregon that NPRC and its witnesses are so certain will be the destination for the TRRC shipments are (a) not yet built, (b) not yet even permitted by federal or state authorities and (c) face opposition from various groups. Blumenfeld V.S. at 3-4. As Mr. Fauth repeatedly notes, the large coal export facilities at Longview and Cherry Point are merely "proposed." Petition, Fauth V.S. at 17-18. In this setting, it is plainly inappropriate to conclude, as NPRC, the Power Report and Mr. Fauth much too readily do, that the Application is deficient or should be rejected for its failure to state that all or most of the coal transported by the TRRC will end up at one or more of these proposed export facilities.[6] Further, to the extent it is exported, Ashland/Otter Creek coal could be exported through the Great Lakes, such as through the facility at Superior, WI, which is now attracting Montana coal en route to Europe. Blumenfeld V.S. at 4; Bobb V.S. at 4.

Montana coal is primarily used in domestic markets and not exported. Blumenfeld V.S. at 2-3. Otter Creek coal is expected by Arch to fare well in the competitive domestic market because of the low cost to extract that coal relative to other mines. Blumenfeld V.S. at 3. Mr. Blumenfeld thus notes that major customers could include Detroit Edison and Minnesota Power which have facilities in the Upper Midwest and might choose to use the Otter Creek coal in lieu of coal from other PRB sources. *Id.* at 3. In addition, the expert reports prepared for the State of Montana in connection with its decision to lease the Otter Creek tracts did not assume that most of the coal would be exported, but rather contemplated domestic use.[7]

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[6] At least one other export facility originally planned for the PNW has not proceeded forward to the permitting stage. *See* http://www.bloomberg.com/news/2012-08-15/railamerica-shelves-plans-to-export-coal-from-washington-1-.html Further, although any predictions of the future are somewhat uncertain, it bears note that Montana's former Governor (who supported the lease of the Otter Creek tracts during his recently-ended tenure) has recently predicted that none of these facilities will be built. *See* http://www.snl.com/InteractiveX/Article.aspx?cdid=A-16755419-12584.

[7] Notably, those reports also assigned a significant value to the Otter Creek coal. *See* Norwest Otter Creek Property Summary Report, Volume I of II, at pages 4-1 through 4-5 (July 12, 2006) (identifying domestic plants as the target market for Otter Creek coal without mention of coal export), available at

Nonetheless, as noted above, the Application quite accurately states in several places that coal transported on the TRRC line not only could be used domestically, but also could be exported. In fact, TRRC cites at page 21 of its Application a national policy favoring more exports, making the point that the export of coal is not only a possibility, but would serve the national interest.

In short, there was no misrepresentation in TRRC's Application regarding the ultimate destination of the Otter Creek coal that will be transported by the TRRC rail line, and no basis to revoke the Application.

C. TRRC's Coal Tonnage Estimates Were Based on Reasonable Assumptions and Do Not Support TRRC's Petition to Revoke

NPRC also argues, incorrectly, that TRRC purposely understated the coal tonnages that will be transported by the proposed rail line in order to avoid having certain environmental analyses conducted in this proceeding. Petition at 13-16. The contention is as inaccurate as it is offensive.

The volume of coal available for transportation predicted in the Application (20 million annual tons at full production) was very clearly based on an estimate of production at the Otter Creek mine, the only mine currently proposed in the Ashland/Otter Creek area. It bears note that the 20 million annual ton projection used in the Application is actually considerably higher than the 12.3 million annual ton projection used in the *TRRC III* proceeding for the Ashland area production. *See* Verified Statement of Mark T. Morey at Total Tonnage Forecast Table,

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http://dnrc.mt.gov/Trust/MMB/OtterCreek/3Evaluations/NorwestStudy2006/NorwestVol1.pdf.; Montana Otter Creek State Coal Valuation (January 30, 2009) http://dnrc.mt.gov/Trust/MMB/OtterCreek/Default.asp (providing a substantial valuation for the coal available to be mined at Otter Creek).

submitted with TRRC's May 1, 2003 Supplemental Evidence in *TRRC III.* Thus, NPRC's contention that TRRC has understated volumes is not correct.

TRRC of course does not take issue with the fact that there is additional coal that is available for mining and transport in the area, and in fact TRRC makes this clear in its Application. *See* Application at 29, and attached Exhibit D, at 1. However, TRRC does not agree that its Application was somehow deficient or misleading for failing to quantify how much additional coal it might transport given the absence of any specific proposals to develop mines other than Otter Creek and thus the absence of any definitive basis on which to make such estimates. In fact, the Northern Cheyenne Tribe, which NPRC identifies as one source of additional coal traffic for the TRRC line (*see* Petition at 13) has told the Board in a scoping filing in this proceeding that it does not intend to exploit its coal resources[8], and no entity has publicly stated that it has any current plans to develop the prior Montco Mine site in Ashland. *See* Bobb V.S. at 4; Blumenfeld V.S. at 5.

Moreover, Mr. Fauth's assumption at pages 17, 22-24 of his Statement that there could be 48.5 million tons/year of coal transported on the TRRC line is unsupported. He apparently derives that figure from a study done in connection with the proposed Longview export facility, but offers no evidence that all or any of that predicted export tonnage would originate on TRRC's lines. Further, at page 22 he cites the November 8, 1996 *TRRC II* decision for the proposition that the long ago proposed Montco mine near Ashland might have an annual

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[8] *See* Northern Cheyenne Tribe Administration Scoping Comments, Document # EI-19850, at Appendix A, pg. 2-28 (January 9, 2013) ("The Tribe has been under tremendous pressure to develop its vast fossilized energy resources to address its impoverished conditions. *In spite of this, the Tribe has chosen not to exploit these resources due to the uncertainties of potential impacts to the environmental and cultural integrity of its homelands and its people.*) (emphasis added).

production capacity of 38 million tons.[9] However, a closer inspection of the Draft EIS in *TRRC II* on which that decision is based indicates that it was assumed at the time that Ashland/Otter Creek area mines might collectively produce up to 18 million tons annually, a figure *lower* than the 20 million tons that Arch now predicts it can extract from Otter Creek. *See* Table 1-2 at page 1-8 of the *TRRC II* Draft EIS and discussion at 1-7 through 1-9, attached as Exhibit A.[10] Further, as noted, there are no pending proposals at this time to develop the Montco mine.

At the same time, TRRC recognizes that for purposes of environmental review, OEA may wish, for example, to utilize different estimates of what could be transported via the TRRC line in order to explore the impacts of different potential coal production scenarios. Precisely that was done by the ICC in its 1985 EIS in this proceeding. *See Tongue River Railroad Company, Inc. – Rail Construction and Operation – In Custer, Power River and Rosebud Counties, Mont.*, Docket No. 30186, Final EIS served Aug. 23, 1985, at 41, Table 3-1 (positing low, medium and high estimates of coal production). Mr. Fauth correctly notes at page 20 of his Statement that a similar analysis was undertaken in the DM&E proceeding, where impacts associated with assumed production at 20, 50 and 100 million tons were assessed. TRRC does not object to a similar exercise here for NEPA purposes.

Finally, NPRC suggests that TRRC somehow cooked the numbers in order to come in below an 8 train/day threshold that it claims could preclude an environmental assessment of

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[9] *See* Finance Docket No. 30186 (Sub No. 2), *Tongue River Railroad Company – Rail Construction and Operation – Ashland to Decker, MT* ("*TRRC II*") (Decision served November 8, 1996) at 14. That same decision refers at page 31 to an estimate of "an additional 5 to 10 million tons projected to move over the new line with the opening of the Montco and other Tongue River Valley coal mines."

[10] *See TRRC II*, Draft EIS (served July 17, 1992) (the reference in Table 1-2 to "Near Mines" refers to the mines that would be served by the *TRRC I* line as is made clear from the text at page 1-9, which discusses the projected tonnage growth from 8 to 18 million tons produced from those mines).

downstream impacts. Petition at 13-15. This claim is far-fetched. The determination of the number of trains per day that could move on the line in the reasonably foreseeable future was based on a simple mathematical calculation that takes into account the tonnage to be moved and the tonnage typically transported via a unit train. That calculation is as follows: 20,000,000 tons/year divided by (125 cars/train times 120 tons/ car times 365 days/year) = 3.65 trains/day *See* Bobb V.S. at 5.

The threshold to which NPRC alludes is found in the Board's regulations at 49 CFR 1105.7(e)(5), which governs when more detailed air quality analyses are required to be included in an Environmental Report prepared by an applicant. Here, TRRC did not prepare such a report, but rather the Board is preparing an EIS using the services of a third party contractor. The 8 train/day regulation does not in any way limit the Board's ability to study air quality or other downstream impacts as appropriate in such a Board-prepared EIS. Moreover, as noted above, TRRC does not object to reasonable assumptions based on potential future Ashland mine development of a higher level of future train traffic on its lines for purposes of NEPA review.

D. BNSF's Role in the TRRC Rail Project

In addition, NPRC claims that the role of BNSF has changed in the TRRC project between 1986 and today. *See* Petition at 12. However, the Petition does not explain why BNSF's role supports a revocation of the Application, and plainly it does not.

The Petition in fact overstates the change in BNSF's role in the TRRC project. BNSF has long had a role in that project. In TRRC's 1998 application seeking authority to construct and operate the Western Alignment in the *TRRC III* proceeding,[11] TRRC explained that BNSF

[11] TRRC Application for Construction and Operation Authority in Finance Docket No. 30186 (Sub-No. 3), *Tongue River Railroad Company, Inc. –Construction and Operations – Western Alignment* (filed April 27, 1998).

might be the operator of the rail line and included a general plan for operations assuming BNSF would be the operator. Four BNSF employees (Gregory Swienton, Larry Parker, Thomas Kraemer, David Mahle) submitted verified statements in support of TRRC's 1998 application. The Board's October 9, 2007 Decision in *TRRC III* likewise makes clear that BNSF was providing monetary and staff support for the TRRC proposal and that BNSF might operate the TRRC line. *TRRC III* Decision, at 12 ("With respect to the concerns about BNSF's role and involvement, the record clearly shows that BNSF has been providing monetary and staff support for this project, and that TRRC and BNSF have been discussing a potential arrangement whereby BNSF would operate over the Decker to Miles City line"). Moreover, the only rail carrier that the TRRC rail line was going to connect to in the original TRRC I proceeding and today is BNSF. The Board did not find these facts problematic in 2007, and they provide no support for a request to "revoke" the Application and require a new one.

NPRC correctly points out that BNSF is now an owner of the TRRC and that BNSF executives hold two of four officer positions at TRRC. However, BNSF obviously does not hold all of the officer positions (Arch Coal holds one of the remaining two) and is not the only company with an ownership interest in TRRC's parent, but is just one of three entities with such an ownership interest. *See* Application at 12-13. Again, none of these facts are problematic, and none would change if a new application were filed.

NPRC also argues that capital improvements or upgrades to BNSF lines west of the point of interchange with the TRRC line must be part of this proceeding. Fauth at 19-26. That argument is tied to its unsupported contention that all or virtually all of the coal will definitely be transported to the proposed export facilities in Washington. It is also based on the faulty premise that improvements announced by BNSF are related to the TRRC project. *See* Bobb V.S. at 3-4.

In any event, any improvements or upgrades to BNSF lines are not part of TRRC's Application and are not subject to the Board's jurisdiction. The extent to which traffic moving on BNSF lines might be assessed as part of the NEPA review in this proceeding is a matter appropriately addressed by OEA in the scoping process, not in a Petition to Revoke.[12]

E. Contrary to NPRC's Claim, TRRC Fully Complied with the STB Regulations Relating to the Preparation of an Environmental Report

NPRC argues that the STB should revoke the Application because TRRC's environmental report is deficient and does not comply with the STB regulations. *See* Petition at 16-18 (citing 49 CFR § 1105.7(a)). Again, NPRC is flat wrong. The STB's regulations waive the requirement to submit an environmental report with an application where OEA works with a third party consultant under OEA's supervision. *See* 49 CFR 1105.10(d). Indeed, the regulations encourage the use of third-party consultants. *Id.* As explained in the Application at 32, a third-party consultant has been retained in this proceeding and, as a result, the requirement to submit an environmental report that would otherwise apply has been waived. 49 CFR § 1105.10(d).

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[12] Mr. Fauth points to the DM&E proceeding to argue that Board needs to take into account the impacts on downstream rail lines. Fauth V.S. at 6-7. The extent of any downstream impact assessment is a question properly addressed in the scoping process.

CONCLUSION

For the reasons stated herein, NPRC's Petition to Revoke is entirely without merit. The Board should deny it.

Respectfully submitted,

Betty Jo Christian
David H. Coburn
Linda S. Stein
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036
(202) 429-3000

Attorneys for Applicant
Tongue River Railroad Company, Inc.

Dated: January 28, 2013

EXHIBIT A

FR-7035-01

INTERSTATE COMMERCE COMMISSION

NOTICE

[FINANCE DOCKET NO. 30186 (SUB NO. 2)]

TONGUE RIVER RAILROAD COMPANY - CONSTRUCTION AND OPERATION OF ADDITIONAL RAIL LINE FROM ASHLAND TO DECKER, IN ROSEBUD AND BIG HORN COUNTIES, MT

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Availability of Draft Environmental Impact Statement.

SUMMARY: The Tongue River Railroad Company has applied to the Interstate Commerce Commission for authority to construct and operate a 42-mile rail line from a point south of Ashland to a connection with operating coal mines near Decker, MT. In addition to analyzing the environmental impacts from the railroad's preferred alignment (which generally parallels the Tongue River), this draft EIS also analyzes the Four Mile Creek Alternative which would avoid the Tongue River Dam and a 10-mile section of the river just north of the Tongue River Dam, and the no-build alternative. At this stage in the environmental analysis, the Commission's Section of Energy and Environment considers the Four Mile Creek Alternative to be the environmentally preferable route should the Commission approve the proposed construction and operation. Comments are specifically requested regarding this preliminary determination and recommended mitigation. The Commission will consider all comments to this draft EIS before issuing a final EIS and rendering a final decision in this proceeding.

DATES: Written comments must be filed by September 21, 1992

ADDRESSES: Send an original and 10 copies of comments referring to Finance Docket 30186 (Sub No. 2) to:

Dana White
Section of Energy and Environment, Room 3214
Interstate Commerce Commission
Washington, D.C. 20423

1.3 RELATIONSHIP TO THE ORIGINAL TRRC RAIL LINE

A number of issues addressed in the 1985 TRRC EIS require updating: coal production and coal traffic volumes; wetlands identification; the U.S. Department of Agriculture's Livestock and Range Research Station (LARRS); the Montana Department of Fish, Wildlife, and Parks (MDFWP); and the Miles City fish hatchery. TRRC has updated its projections for the future production of coal to be transported by the railroad. The original proposal relative to LARRS has been agreed to and is incorporated in an easement deed between TRRC and the USDA. As to the Miles City fish hatchery, a proposal is pending with the MDFWP to allow TRRC to cross that facility.

1.3.1 Coal Production and Coal Traffic Volumes

By including the coal traffic of existing mines at Decker and Spring Creek, the TRRC has updated its projections of coal production originally proposed in the 1985 EIS. For the purposes of environmental analysis, the 1985 EIS used the coal projections presented in Table 1-1. TRRC currently proposes to transport tonnages that are within the scenarios used in the 1985 analysis, but would be distributed differently. The estimated new coal production scenario, as well as the related number of trains, is shown in Table 1-2.

Table 1-1. 1985 Coal Production Scenarios (in millions of tons).[1]

	LOW	MEDIUM	HIGH
1995/1996	13	15	17
2000/2001	18	25	34
2005/2006	22	31	44
2010/2011	33	38	44

[1] TRRC EIS 1985:3-10, 3-12.

The largest percentage of TRRC's immediate haul, however, would originate from the existing mines at Decker and Spring Creek and, to a much lesser degree, from Wyoming Powder River Basin mines. The adjustment in operations would result in less tonnage being transported from the Ashland area during the analysis period (1996-2010).

The dates for initial mine production reflect a change from 1983. Construction of the Montco Mine has been moved forward to the year 1993. Upon completion of mine construction, TRRC initially would haul two million tons per year from Montco. Other Ashland area mines would not be in operation until the year 2000 and 2010.

Table 1-2 Estimated Coal Production.

Estimated Coal Production & Train Trips/Day (in millions of tons).[1]

	Estimated Coal Production				Trains / Day		
	Wyoming[2]	Existing[3]	"Near Mines"	Total	On the TRRC Extension	Originating from the Ashland-Area Mines	On the Entire TRRC Line
1995/1996	3	12	2	17	8	2	10
2000	6	12	8	26	8	4	12
2005	6	15	10	31	10	4	14
2010	6	15	18	39	10	8	18

[1] The projections for coal traffic have been developed in conjunction with the Commission's Section of Energy and Environment, the Bureau of Land Management and the Montana Department of State Lands. Based on the CSI assumptions that each train hauls a 11,615-net-ton load and that trains run 365 days out of the year.

[2] Possible diversion of BN traffic from Wyoming mines.

[3] During the initial analysis period, an estimated 2 million tons (MT) of coal could derive from either existing mines at Decker/Spring Creek or from the permitted but not yet operational Montco Mine.

As mentioned earlier, the Decker/Spring Creek and Wyoming mines would be the principal sources of TRRC coal traffic in the early years. The coal traffic from Decker/Spring Creek and Wyoming mines would remain constant, or slightly increase, throughout the decade following the year 2000 and up to the end of the analysis period in 2010. During that decade, however, the coal traffic from the Ashland area mines would increase from eight million tons in the year 2000 to 18 million tons by the end of the analysis period.

There would be less coal production in the Ashland mines during the analysis period than that developed in the 1985 coal production scenarios. The coal traffic volumes originating from the mines other than Montco would be condensed into one decade, with two additional mines possibly requiring haulage by the year 2000. The final mine would not require haulage until near the close of the analysis period.

Though the sources of the new coal production scenarios have changed, the volume of coal traffic to be hauled on the entire TRRC line, that is the extension from Decker to Ashland and the already-approved line from Ashland to Miles City, is *generally the same as the medium scenario proposed in 1985*. The TRRC 1985 medium scenario was the most realistic projection developed by all the involved parties and high and low projections were extrapolated from it. The environmental impacts which were identified and analyzed in the TRRC 1985 EIS placed most emphasis on the impacts from the medium scenario. Therefore, the impact analysis is adopted from the 1985 TRRC EIS as it pertains to the traffic that will be moving over the already-approved Ashland to Miles City portion of the line. If any changes merit an update to the 1985 TRRC EIS analysis, they will be noted in this document.

For the proposed extension from Decker to Ashland, the analysis is based on the projected new coal production scenarios set out in Table 1-2 which represents TRRC's best traffic estimates and which, as noted above, approximates the former TRRC 1985 EIS medium coal production scenario. As in the TRRC 1985 EIS, where appropriate in this document, we have also reviewed the environmental impacts from the extrapolated high coal production scenario.

VERIFIED STATEMENT OF

STEVAN B. BOBB

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 30186

TONGUE RIVER RAILROAD COMPANY, INC. – RAIL CONSTRUCTION AND OPERATION – IN CUSTER, POWDER RIVER AND ROSEBUD COUNTIES, MT

VERIFIED STATEMENT OF STEVAN B. BOBB IN SUPPORT OF TONGUE RIVER RAILROAD COMPANY'S REPLY TO PETITION TO REVOKE SUPPLEMENTAL APPLICATION

My name is Stevan B. Bobb. I am Executive Vice President and Chief Marketing Officer for BNSF Railway Company ("BNSF"). Since December 2011, I have also been President of Tongue River Railroad Company, Inc. ("TRRC"). I joined BNSF's predecessor, the Burlington Northern Railroad, in 1987 and have been employed continuously by the railroad since that date. Following some early work in information systems and marketing support, my career has been spent primarily in line marketing positions. I have a B.S. in Agriculture from North Dakota State University.

During my tenure at BNSF, I have held positions that have given me responsibility for the sales and marketing of BNSF's coal transportation services. The vast majority of this coal originates at mines located in the Powder River Basin ("PRB"). Based on my experience, and in my current position as TRRC President, I have become very familiar with the Tongue River Railroad project.

I offer this verified statement in response to the Petition to Revoke Supplemental Application filed by Northern Plains Resource Council and Rocker Six Cattle Company, which I will refer to jointly as "NPRC." I will address assertions concerning the Tongue River Railroad Company's December 17, 2012 Application found in the Verified Statement of Mr. Gerald W. Fauth III, a consultant, which is attached to the NPRC Petition. Specifically, I will respond to Mr. Fauth's comments about the Colstrip Alignment now favored by TRRC, the relationship between BNSF and TRRC and volumes of coal that might be transported via the TRRC line.

I. TRRC's Choice of the Colstrip Routing As its Preferred Routing

Mr. Fauth states that TRRC changed its preferred alignment to the Colstrip Alignment because it proposes to transport most of the coal from Ashland/Otter Creek to export terminals in the Pacific Northwest (PNW), notably terminals that would be served by BNSF and that have been proposed for development in Washington and Oregon. However, the fact is that TRRC changed its preferred alignment to the Colstrip Alignment for the simple reasons that (1) it is shorter (42 miles of new construction versus other alignments that are over 80 miles long), thus considerably less expensive to construct; (2) it is operationally feasible and (3) it appears likely to have fewer environmental impacts than other routings. This is fully and accurately explained in the TRRC Application at pages 22-27.

The Colstrip Alignment in fact has been on the "drawing board" as an option for the TRRC line since the 1980's and was considered along with other alternative routings in the TRRC I proceeding. At that time, the routing suffered from operational challenges of moving large volumes of coal over the grade associated with the Colstrip routing. However, that issue has been ameliorated due to advances in locomotive technology. BNSF, which will operate the TRRC line, has determined that its locomotives will be able to pull fully loaded unit trains of coal over the grades associated with the Colstrip Alignment.

Further, as the Application explains, the Colstrip Alignment is fully capable of handling eastbound as well as westbound traffic. The mileage disadvantage of transporting eastbound traffic over the Colstrip Alignment is only about 38 miles versus routings between Miles City and Otter Creek. This additional mileage will not impair eastbound movements.

II. BNSF Rail Lines

Mr. Fauth claims that the TRRC proceeding involves the "rehabilitation of nearly 2,000 miles of existing BNSF lines in Montana and Wyoming" but offers no basis for his contention that any BNSF Montana or Wyoming lines (other than the Colstrip Subdivision) will need rehabilitation as a result of the TRRC project. None of the Otter Creek or Ashland area traffic is likely to traverse through Wyoming. As the Application states, some upgrades to BNSF's Colstrip Subdivision (which is in fact operational today) will be required. Beyond that, BNSF has no immediate plans to upgrade any lines in Montana or elsewhere as a result of the addition of about 3.7 loaded trains/day to its system from Otter Creek traffic.

Mr. Fauth claims that capital projects announced by BNSF in 2012 for Montana and Washington are related to TRRC coal movements and to PRB export coal movements and urges the STB to require BNSF to disclose "the specifics and costs associated [with] *sic.* the system improvements (such as the new lead in Longview), which are related to potential export coal movements from TRRC-originated mines." Fauth at 21. However, improvements to the BNSF system in the PNW are not the result of TRRC's proposal and do not require Board approval. The improvements at Longview Junction (construction of the Longview bypass track and port entrance) were undertaken to support an export grain terminal at the Port of Longview, WA (that facility was completed in 2011). BNSF understands from the customer that grain exports will steadily increase over the next several years due to the rising demand in Asia and the existing grain supply chain being redirected to this new facility. Additional rail infrastructure construction to support the grain terminal, a wye, was postponed until 2012 due to permitting delays. BNSF invests capital to make improvements to its rail system on a regular basis. As Mr. Fauth likely knows, BNSF has announced over the course of last year similar capital investments in other states that it serves, none of which were related to TRRC. See, for example, announcements set forth at Exhibit 1.

Mr. Fauth's contention that virtually all of the TRRC-originating coal will be transported westbound is in any event not correct. The coal could also move eastbound for domestic use and export from Great Lakes ports, such as at Superior, WI, from where Montana coal is today transported to Europe.

III. The Application Does Not Misstate the Volumes that Might Be Transported

In forecasting that 20 million tons of coal might annually be transported on the TRRC line, TRRC relied on estimates supplied by Arch Coal for production at the Otter Creek mine, which would be served by Terminus Point 2.

TRRC did not present an estimate for the volume of coal that might be transported from Terminus Point 1 because at this time no coal mines have been proposed for the area that would be served by the portion of the line that would end of that point. Nonetheless, the Application acknowledges that at some future date that coal could be transported via the TRRC line from other mines that may be developed in the Ashland area. Precise estimates of how much coal might be so transported are difficult to make, however, given the absence of more specific facts about the size and number of mines that might be developed, and the timing of such development, all of which will be dictated by dynamic market forces.

The calculation in the Application of the number of trains per day that could move on the TRRC line in the reasonably foreseeable future was based on a simple mathematical formula that takes into account the 20 million tons of coal to be moved from the Otter Creek mine annually and the tonnage typically transported via a unit train. That formula is as follows:

> 20,000,000 tons/year divided by (125 cars/train times 120 tons/ car times 365 days/year) = 3.65 trains/day

VERIFICATION

I, Stevan B. Bobb, hereby verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Stevan B. Bobb

Dated this 28 day of January 2013

EXHIBIT 1 TO

VERIFIED STATEMENT OF

STEVAN B. BOBB

News Release

BNSF plans $61 million capital program in Iowa to maintain and expand rail capacity

FORT WORTH, TEXAS, August 21, 2012:

BNSF Railway Company (BNSF) plans to invest an estimated $61 million on maintenance and rail capacity improvement projects in Iowa this year.

BNSF will continue its work on the Burlington Bridge by replacing existing through-truss spans and also begin work to replace BNSF's bridge over the Missouri River between Plattsmouth, Neb., and Pacific Jct., Iowa. Additionally, BNSF will continue its robust maintenance program in Iowa, which will include 315 miles of track surfacing and undercutting work, and the replacement of 27 miles of rail and about 183,000 ties.

"Investment in BNSF's network in Iowa is an investment in Iowa jobs and competitiveness, and will ensure our infrastructure remains strong and efficient to better serve Iowa shippers and the state's economy," said Matthew K. Rose, Chairman and Chief Executive Officer.

The planned capital investments in Iowa are part of BNSF's total 2012 capital commitment of $3.9 billion. The largest component of the capital plan is spending $2.1 billion on BNSF's core network and related assets. BNSF also plans to spend approximately $1.1 billion on locomotive, freight car and other equipment acquisitions, many of which will serve Iowa. The program also includes about $300 million for federally mandated positive train control (PTC) and $400 million for terminal, line and intermodal expansion and efficiency projects.

U.S. Department of Commerce economic data indicates that every dollar invested in freight railroads yields $3 in economic output and according to a Department of Commerce economic model, every freight rail job supports another 4.5 jobs somewhere else in our economy.

About BNSF

BNSF Railway is one of North America's leading freight transportation companies operating on 32,000 route miles of track in 28 states and two Canadian provinces. BNSF is one of the top transporters of consumer goods, grain, industrial goods and low-sulfur coal that help feed, clothe, supply, and power American homes and businesses every day. BNSF and its employees have developed one of the most technologically advanced, and efficient railroads in the industry. We work continuously to improve the value of the safety, service, energy, and environmental benefits we provide to our customers and the communities we serve. You can learn more about BNSF at www.BNSF.com.

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BNSF RAILWAY

News Release

BNSF plans $93 million capital program in Illinois to maintain and improve rail capacity

FORT WORTH, TEXAS, August 21, 2012:

BNSF Railway Company (BNSF) plans to invest an estimated $93 million on maintenance and rail capacity improvement projects in Illinois this year.

BNSF will continue its robust maintenance program in Illinois, which will include 1,216 miles of track surfacing and undercutting work, and the replacement of 34 miles of rail and about 270,000 ties.

"BNSF's investments will improve our ability to provide rail freight services to Illinois businesses and communities, and will expand opportunities to create more jobs and growth for the Illinois economy," said Matthew K. Rose, Chairman and Chief Executive Officer.

The planned capital investments in Illinois are part of BNSF's total 2012 capital commitment of $3.9 billion. The largest component of the capital plan is spending $2.1 billion on BNSF's core network and related assets. BNSF also plans to spend approximately $1.1 billion on locomotive, freight car and other equipment acquisitions, many of which will serve Illinois. The program also includes about $300 million for federally mandated positive train control (PTC) and $400 million for terminal, line and intermodal expansion and efficiency projects.

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RAILWAY

News Release

BNSF plans $92 million capital program in Oklahoma to Maintain and Improve Rail Capacity

FORT WORTH, TEXAS, June 27, 2012 :

BNSF Railway Company (BNSF) plans to invest an estimated $92 million on maintenance and rail capacity improvement projects in Oklahoma this year.

BNSF will continue its robust track maintenance program in Oklahoma, which will include 667 miles of track surfacing and undercutting work, the replacement of 29 miles of rail and about 196,000 ties, as well as significant signal upgrades for the federally mandated positive train control (PTC).

"Investment in BNSF's network in Oklahoma is an investment in Oklahoma jobs and competitiveness, and will ensure our infrastructure remains strong and efficient to better serve Oklahoma shippers and the state's economy," said Matthew K. Rose, Chairman and Chief Executive Officer.

The planned capital investments in Oklahoma are part of BNSF's total 2012 capital commitment of $3.9 billion. The largest component of the capital plan is spending $2.1 billion on BNSF's core network and related assets. BNSF also plans to spend approximately $1.1 billion on locomotive, freight car and other equipment acquisitions, many of which will serve Oklahoma. The program also includes about $300 million for federally mandated positive train control and $400 million for terminal, line and intermodal expansion and efficiency projects.

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News Release

BNSF Plans $80 Million Capital Program in Colorado to Maintain and Expand Rail Capacity

FORT WORTH, TEXAS, June 19, 2012 :

BNSF Railway Company (BNSF) plans to invest an estimated $80 million on maintenance and rail capacity improvement and expansion projects in Colorado this year.

BNSF's 2012 capacity enhancement projects in Colorado include construction of a new maintenance of way facility, as well as significant signal upgrades for federally mandated positive train control (PTC).

BNSF will continue its robust track maintenance program in Colorado, which will include 325 miles of track surfacing and undercutting work, and the replacement of 50 miles of rail and about 211,000 ties.

"Investment in BNSF's network in Colorado is an investment in Colorado jobs and competitiveness, and will ensure our infrastructure remains strong and efficient to better serve Colorado shippers and the state's economy," said Matthew K. Rose, Chairman and Chief Executive Officer.

The planned capital investments in Colorado are part of BNSF's total 2012 capital commitment of $3.9 billion. The largest component of the capital plan is spending $2.1 billion on BNSF's core network and related assets. BNSF also plans to spend approximately $1.1 billion on locomotive, freight car and other equipment acquisitions, many of which will serve Colorado. The program also includes about $300 million for federally mandated positive train control and $400 million for terminal, line and intermodal expansion and efficiency projects.

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BNSF RAILWAY

News Release

BNSF Plans $60 Million Capital Program in Wyoming to Maintain and Improve Rail Capacity

FORT WORTH, TEXAS, June 19, 2012 :

BNSF Railway Company (BNSF) plans to invest an estimated $60 million on maintenance and rail capacity improvement projects in Wyoming this year.

BNSF will continue its robust track maintenance program in Wyoming, which will include 1,115 miles of track surfacing and undercutting work, and the replacement of 31 miles of rail and about 36,000 ties.

"BNSF's investments will improve our ability to provide rail freight services to Wyoming businesses and communities, and will expand opportunities to create more jobs and growth for the Wyoming economy," said Matthew K. Rose, Chairman and Chief Executive Officer.

The planned capital investments in Wyoming are part of BNSF's total 2012 capital commitment of $3.9 billion. The largest component of the capital plan is spending $2.1 billion on BNSF's core network and related assets. BNSF also plans to spend approximately $1.1 billion on locomotive, freight car and other equipment acquisitions, many of which will serve Wyoming. The program also includes about $300 million for federally mandated positive train control (PTC) and $400 million for terminal, line and intermodal expansion and efficiency projects.

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RAILWAY

News Release

BNSF Plans $65 Million Capital Program in New Mexico to Maintain and Improve Rail Capacity

FORT WORTH, TEXAS, June 5, 2012 :

BNSF Railway Company (BNSF) plans to invest an estimated $65 million on track and rail capacity improvement projects in New Mexico this year.

BNSF will continue its robust track improvement program in New Mexico, which will include 560 miles of track surfacing and undercutting work, the replacement of 22 miles of rail and about 142,000 ties, as well as significant signal upgrades for federally mandated positive train control (PTC).

"Investment in BNSF's network in New Mexico is an investment in New Mexico jobs and competitiveness, and will ensure our infrastructure remains strong and efficient to better serve New Mexico shippers and the state's economy," said Matthew K. Rose, Chairman and Chief Executive Officer.

The planned capital investments in New Mexico are part of BNSF's total 2012 capital commitment of $3.9 billion. The largest component of the capital plan is spending $2.1 billion on BNSF's core network and related assets. BNSF also plans to spend approximately $1.1 billion on locomotive, freight car and other equipment acquisitions, many of which will serve New Mexico. The program also includes about $300 million for federally mandated positive train control and $400 million for terminal, line and intermodal expansion and efficiency projects.

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News Release

BNSF Plans $80 Million Capital Program in Arizona to Maintain and Improve Rail Capacity

FORT WORTH, TEXAS, June 5, 2012 :

BNSF Railway Company (BNSF) plans to invest an estimated $80 million on maintenance and rail capacity improvement projects in Arizona this year.

BNSF will continue its robust track maintenance program in Arizona, which will include 377 miles of track surfacing and undercutting work, the replacement of 26 miles of rail and about 233,000 ties, as well as signal upgrades for federally mandated positive train control (PTC).

"BNSF's investments will improve our ability to provide rail freight services to Arizona businesses and communities, and will expand opportunities to create more jobs and growth for the Arizona economy," said Matthew K. Rose, Chairman and Chief Executive Officer.

The planned capital investments in Arizona are part of BNSF's total 2012 capital commitment of $3.9 billion. The largest component of the capital plan is spending $2.1 billion on BNSF's core network and related assets. BNSF also plans to spend approximately $1.1 billion on locomotive, freight car and other equipment acquisitions, many of which will serve Arizona. The program also includes about $300 million for federally mandated positive train control and $400 million for terminal, line and intermodal expansion and efficiency projects.

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News Release

BNSF Plans $86 Million Capital Program in North Dakota to Maintain and Expand Rail Capacity

FORT WORTH, TEXAS, May 30, 2012:

BNSF Railway Company (BNSF) plans to invest an estimated $86 million on maintenance and rail capacity improvement projects in North Dakota this year.

As part of its 2012 capital plan, BNSF will be raising the track at Devils Lake that is threatened by rising water. This project is being funded by BNSF, Amtrak and the state of North Dakota.

BNSF will continue its robust track maintenance program in North Dakota, which will include 1,232 miles of track surfacing and undercutting work, the replacement of 67 miles of rail and about 122,000 ties, as well as significant signal upgrades for federally mandated positive train control (PTC).

"BNSF's investments will improve our ability to provide rail freight services to North Dakota businesses and communities, and will expand opportunities to create more jobs and growth for the North Dakota economy," said Matthew K. Rose, Chairman and Chief Executive Officer.

The planned capital investments in North Dakota are part of BNSF's total 2012 capital commitment of $3.9 billion. The largest component of the capital plan is spending $2.1 billion on BNSF's core network and related assets. BNSF also plans to spend approximately $1.1 billion on locomotive, freight car and other equipment acquisitions, many of which will serve North Dakota. The program also includes about $300 million for federally mandated positive train control and $400 million for terminal, line and intermodal expansion and efficiency projects.

U.S. Department of Commerce economic data indicates that every dollar invested in freight railroads yields $3 in economic output and according to a Department of Commerce economic model, every freight rail job supports another 4.5 jobs somewhere else in our economy.

About BNSF

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RAILWAY

News Release

BNSF Plans $100 Million Capital Program in Minnesota to Maintain and Expand Rail Capacity

FORT WORTH, TEXAS, May 30, 2012:

BNSF Railway Company (BNSF) plans to invest an estimated $100 million on maintenance and rail capacity improvement and expansion projects in Minnesota this year.

BNSF's 2012 capacity enhancement projects in Minnesota include upgrading rail sidings to increase speeds, as well as signal upgrades for federally mandated positive train control (PTC).

BNSF will continue its robust maintenance program in Minnesota, which will include 1,817 miles of track surfacing and undercutting work, and the replacement of 42 miles of rail and about 325,000 ties.

"BNSF's investments will improve our ability to provide rail freight services to Minnesota businesses and communities, and will expand opportunities to create more jobs and growth for the Minnesota economy," said Matthew K. Rose, Chairman and Chief Executive Officer.

The planned capital investments in Minnesota are part of BNSF's total 2012 capital commitment of $3.9 billion. The largest component of the capital plan is spending $2.1 billion on BNSF's core network and related assets. BNSF also plans to spend approximately $1.1 billion on locomotive, freight car and other equipment acquisitions, many of which will serve Minnesota. The program also includes about $300 million for federally mandated positive train control and $400 million for terminal, line and intermodal expansion and efficiency projects.

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BNSF RAILWAY

News Release

BNSF Plans $120 Million Capital Program in California to Maintain and Expand Rail Capacity

FORT WORTH, TEXAS, May 29, 2012 :

BNSF Railway Company (BNSF) plans to invest an estimated $120 million on maintenance and rail capacity improvement projects in California this year.

BNSF will install an automated gate system at its Hobart Intermodal Facility to increase the velocity of container/trailer processing. BNSF will also continue its robust track maintenance program in California, which will include 786 miles of track surfacing and undercutting work, the replacement of 40 miles of rail and about 377,000 ties, as well as signal upgrades for federally mandated positive train control (PTC).

"BNSF's investments will improve our ability to provide rail freight services to California businesses and communities, and will expand opportunities to create more jobs and growth for the California economy," said Matthew K. Rose, Chairman and Chief Executive Officer.

The planned capital investments in California are part of BNSF's total 2012 capital commitment of $3.9 billion. The largest component of the capital plan is spending $2.1 billion on BNSF's core network and related assets. BNSF also plans to spend approximately $1.1 billion on locomotive, freight car and other equipment acquisitions, many of which will serve California. The program also includes about $300 million for federally mandated positive train control and $400 million for terminal, line and intermodal expansion and efficiency projects.

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News Release

BNSF Plans $30 Million Capital Program in South Dakota to Maintain and Expand Rail Capacity

FORT WORTH, TEXAS, May 23, 2012 :

BNSF Railway Company (BNSF) plans to invest an estimated $30 million on maintenance and rail capacity improvement projects in South Dakota this year.

BNSF's 2012 capacity enhancement projects in South Dakota include expansion of rail sidings to increase rail capacity, as well as signal upgrades.

BNSF will also continue its robust maintenance program in South Dakota, which will include 676 miles of track surfacing and undercutting work, and the replacement of 28 miles of rail and about 121,000 ties.

"BNSF's investments will improve our ability to provide rail freight services to South Dakota businesses and communities, and will expand opportunities to create more jobs and growth for the South Dakota economy," said Matthew K. Rose, Chairman and Chief Executive Officer.

The planned capital investments in South Dakota are part of BNSF's total 2012 capital commitment of $3.9 billion. The largest component of the capital plan is spending $2.1 billion on BNSF's core network and related assets. BNSF also plans to spend approximately $1.1 billion on locomotive, freight car and other equipment acquisitions, many of which will serve South Dakota. The program also includes about $300 million for federally mandated positive train control (PTC) and $400 million for terminal, line and intermodal expansion and efficiency projects

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RAILWAY

News Release

BNSF Plans $199 Million Capital Program in Texas to Maintain and Expand Rail Capacity

FORT WORTH, TEXAS, May 23, 2012 :

BNSF Railway Company (BNSF) plans to invest an estimated $199 million on maintenance and rail capacity improvement and expansion projects in Texas this year.

BNSF's 2012 capacity enhancement projects in Texas include expansion of rail capacity at Tower 55 in Fort Worth, the realignment of BNSF's mainline for the extension of the Alliance Airport runway just north of Fort Worth, replacement of the Galveston Causeway Bridge, installation of wheel detectors in Galveston, improvements to BNSF's Amarillo car shop, as well as significant signal upgrades for federally mandated positive train control (PTC).

BNSF will also continue its robust track maintenance program in Texas, which will include 1,341 miles of track surfacing and undercutting work, and the replacement of 84 miles of rail and about 563,000 ties.

"BNSF's investments will improve our ability to provide rail freight services to Texas businesses and communities, and will expand opportunities to create more jobs and growth for the Texas economy," said Matthew K. Rose, Chairman and Chief Executive Officer.

The planned capital investments in Texas are part of BNSF's total 2012 capital commitment of $3.9 billion. The largest component of the capital plan is spending $2.1 billion on BNSF's core network and related assets. BNSF also plans to spend approximately $1.1 billion on locomotive, freight car and other equipment acquisitions, many of which will serve Texas. The program also includes about $300 million for federally mandated positive train control and $400 million for terminal, line and intermodal expansion and efficiency projects.

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News Release

BNSF plans $130 million capital program in Missouri to maintain and improve rail capacity

FORT WORTH, TEXAS, May 15, 2012 :

BNSF Railway Company (BNSF) plans to invest an estimated $130 million on maintenance and rail capacity improvement projects in Missouri this year.

BNSF will continue its robust track maintenance program in Missouri, which will include 1,507 miles of track surfacing and undercutting work, the replacement of 103 miles of rail and about 122,000 ties, as well as significant signal upgrades for federally mandated positive train control (PTC).

"BNSF's investments will improve our ability to provide rail freight services to Missouri businesses and communities, and will expand opportunities to create more jobs and growth for the Missouri economy," said Matthew K. Rose, Chairman and Chief Executive Officer.

The planned capital investments in Missouri are part of BNSF's total 2012 capital commitment of $3.9 billion. The largest component of the capital plan is spending $2.1 billion on BNSF's core network and related assets. BNSF also plans to spend approximately $1.1 billion on locomotive, freight car and other equipment acquisitions, many of which will serve Missouri. The program also includes about $300 million for federally mandated positive train control and $400 million for terminal, line and intermodal expansion and efficiency projects.

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News Release

BNSF plans $242 million capital program to maintain and expand Kansas rail capacity

FORT WORTH, TEXAS, May 15, 2012:

BNSF Railway Company (BNSF) plans to invest an estimated $242 million on maintenance and rail capacity enhancement and expansion projects in Kansas this year.

BNSF's 2012 capacity enhancement projects in Kansas include the continued construction of BNSF's Kansas City Intermodal Facility southwest of Kansas City in Edgerton, Kansas, improvements to the Topeka locomotive shops, and significant signal upgrades for federally mandated positive train control (PTC).

BNSF will continue its robust maintenance program, which will include 619 miles of track surfacing and undercutting work, the replacement of 57 miles of rail and about 247,000 ties.

"BNSF is proud of its ability to provide transportation services to the businesses and communities we serve in Kansas, and we look forward to continuing to grow our capacity in a way that facilitates growth for the Kansas economy," said Matthew K. Rose, Chairman and Chief Executive Officer.

BNSF's planned capital commitments in Kansas are part of BNSF's total 2012 capital commitment of $3.9 billion. The largest component of the capital plan is spending $2.1 billion on BNSF's core network and related assets. BNSF also plans to spend approximately $1.1 billion on locomotive, freight car and other equipment acquisitions. The program also includes about $300 million for federally mandated positive train control and $400 million for terminal, line and intermodal expansion and efficiency projects.

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News Release

BNSF plans $202 million capital program in Nebraska to maintain and expand rail capacity

FORT WORTH, TEXAS, May 1, 2012:

BNSF Railway Company (BNSF) plans to invest an estimated $202 million on maintenance and rail capacity improvement and expansion projects in Nebraska this year.

BNSF's 2012 capacity enhancement projects in Nebraska include adding a second main line track in the Grand Island area, beginning work to replace BNSF's bridge over the Missouri River between Plattsmouth, Neb., and Pacific Jct., Iowa, expansion of BNSF's Lincoln locomotive shop, improvements to BNSF's Havelock car shop, and significant signal upgrades for federally mandated positive train control (PTC).

BNSF will also continue its robust track maintenance program in Nebraska, which will include 1,405 miles of track surfacing and undercutting work, and the replacement of 100 miles of rail and about 140,000 ties.

"BNSF's investments will improve our ability to provide rail freight services to Nebraska businesses and communities, and will expand opportunities to create more jobs and growth for the Nebraska economy," said Matthew K. Rose, Chairman and Chief Executive Officer.

The planned capital investments in Nebraska are part of BNSF's total 2012 capital commitment of $3.9 billion. The largest component of the capital plan is spending $2.1 billion on BNSF's core network and related assets. BNSF also plans to spend approximately $1.1 billion on locomotive, freight car and other equipment acquisitions, many of which will serve Nebraska. The program also includes about $300 million for federally mandated positive train control and $400 million for terminal, line and intermodal expansion and efficiency projects.

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VERIFIED STATEMENT OF

ANDREW BLUMENFELD

BEFORE THE

SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 30186

TONGUE RIVER RAILROAD COMPANY, INC. – RAIL CONSTRUCTION AND OPERATION – IN CUSTER, POWDER RIVER AND ROSEBUD COUNTIES, MT

VERIFIED STATEMENT OF ANDREW BLUMENFELD IN SUPPORT OF TONGUE RIVER RAILROAD COMPANY'S REPLY TO PETITION TO REVOKE SUPPLEMENTAL APPLICATION

My name is Andrew Blumenfeld. I am Vice President of Analysis and Strategy for Arch Coal, Inc. ("Arch"). My business address is One CityPlace Drive, Suite 300, St. Louis, MO 63141. I am very familiar with the Otter Creek mine, which is a greenfield coal mining project owned and controlled by a subsidiary of Arch that is currently in the preliminary permitting process. The Otter Creek mine, and with other coal resources in the Ashland, MT area, could be developed for production in the coming years. I am also generally familiar with the Tongue River Railroad project and the December 17, 2012 Supplemental Application for Construction and Operation Authority (hereafter "Application") filed at the Surface Transportation Board by the Tongue River Railroad Company, which is owned by an entity in which Arch has invested.

I am providing this verified statement in response to the January 7, 2013 Petition to Revoke Supplemental Application submitted by Northern Plains Resource Council and Rocker Six Cattle Company (jointly, "NPRC"), as well as the November 2012 report prepared for NPRC by Power Consulting Inc. ("Power Report") and the Verified Statement of Mr. Gerald W. Fauth III, another consultant, which are attached as support for NPRC's Petition.

I. The Application Does Not Misrepresent the Destination Market for Ashland/Otter Creek Coal

NPRC, the Power Report and Mr. Fauth claim that the Application misrepresents the destination market for the coal to be transported from the Ashland/Otter Creek area by failing to acknowledge that the majority of that coal will be exported through coal export facilities that have been proposed for construction in Oregon and Washington rather than to power plants in the Upper Midwest, as has been the case since the TRRC line was first proposed in the 1980's. I agree generally with the proposition that the market for coal is dynamic and, over time, markets evolve and demand shifts. These market forces have a profound effect on product demand and mining and shipping priorities. However, I do not agree that it is a foregone conclusion, as the Powers Report and Mr. Fauth assert, that virtually all of the coal transported from the Otter Creek mine or the Ashland area will be exported to Asia through port facilities that have been proposed for development in Oregon and Washington. Some percentage of the coal may well be exported, as the TRRC Application states. However, it is far from a certainty that all or most of the coal will be exported from the Oregon and Washington facilities that they describe. There are several reasons for this.

A. Otter Creek/Ashland Coal Will be Competitive in the Domestic Coal Market

There remains a significant anticipated domestic market for Montana coal as has historically been the case and Otter Creek/Ashland coal will compete in that domestic market when the coal is developed. Today, almost twice as much Montana coal is used domestically as opposed to exported, according to the Energy Information Administration. *See* Energy Information Administration, Annual Coal Distribution Report, 2011 at http://www.eia.gov/coal/distribution/annual/ (showing that almost twice as much Montana coal was distributed domestically than was exported in 2011). Consistent with this historic pattern, I anticipate that the coal mined at Otter Creek will be highly competitive with PRB coal mined elsewhere in Montana and Wyoming and used today at numerous generating plants in the Upper Midwest, including facilities operated by Detroit Edison and Minnesota Power.

The cost to extract the Otter Creek coal, and other coal in the Ashland area, is relatively low which should allow such coal to compete for market share in the domestic coal market. The coal in the Ashland area is relatively shallow in the ground and the ratio of coal to overburden is lower than other operating mines in the region. Assuming a modest rate of production volume as indicated in the Application, this coal can be efficiently and cheaply extracted through the mining process for an extended period of time.

Although the proposed Colstrip Alignment for the TRRC line generally angles northwesterly, this does not mean that it would be uneconomic to use that route to transport Otter Creek coal eastbound. The primary objective for the rail spur is to connect the coal resource to the mainline of the BNSF. The additional mileage to move Otter Creek/Ashland coal to destinations in the Upper Midwest via Colstrip is not significant, adding only an additional 38 miles from Otter Creek to Miles City versus alternative routings for the railroad between Otter Creek and Miles City that have previously been under consideration. This additional mileage is de minimis in terms of the transportation cost and will not offset the significant extraction cost advantages enjoyed by Otter Creek/Ashland area coal in comparison to coal from many other Montana and Wyoming mines.

B. Export Opportunities are Also Present

While some percentage of the coal may be exported, it is uncertain that it would be exported from the Longview, Cherry Point or other export facilities that have been proposed for

Washington and Oregon, as Mr. Fauth and the Powers Report argue will be the case. That is because these facilities remain in the proposal stage and have not yet been permitted. These projects have generated opposition from certain groups, making uncertain whether final approval will be forthcoming or the timing of any such approval.

Further, export of coal from Otter Creek/Ashland does not necessarily mean that the coal will move westbound. It is possible that some of the coal may travel east for export to Europe from existing facilities, for example, at Superior, Wisconsin. Montana coal is already exported to Europe from that Lake Superior port and the volume is expected to increase in the future. See http://www.midwestenergy.com/about.php

C. Market Forces Will Determine How the Coal Will be Used

Market forces will determine how much coal from the Otter Creek/Ashland area will be used domestically, or exported from West Coast ports or Great Lakes ports, several years from now, when that coal becomes available for transportation following the permitting and development/construction phases for the TRRC and the mines. Those market forces are quite dynamic, and will vary based on several factors, including new technologies (such as liquefaction) that can affect the attractiveness of coal as an energy source and the price of natural gas, which has been low for several years but which is trending upward. Indeed, recent industry analyses have consistently revealed that PRB coal is currently competitive with natural gas and the upwardly trending prices of natural gas suggest this competition will continue and improve into the foreseeable future. Thus, what Mr. Fauth and Mr. Power describe as a declining market for domestic use of coal could transform to a growing domestic market in the next few years. The Application therefore correctly observes that the coal will be available for domestic use and export, and that market forces will dictate its use.

II. The Application Does Not Misstate the Volumes that Might Be Transported

Mr. Fauth claims that TRRC has understated in its Application the potential volumes of coal that it might transport, both in estimating that up to 20 million tons of Otter Creek coal will be transported and in failing to account for coal that might be transported from other Ashland area mines. However, the Application properly predicts the volume of coal to be transported from the Otter Creek mine. As indicated in the Application, Arch estimates that it intends to mine 20 million tons/year at that site, a volume estimate Arch has consistently maintained. The Application thus correctly presented a volume estimate based on Arch's plans for the Otter Creek mine.

The Application also notes that other mines may be developed in the Ashland area. *See* Application at 29. However, at this time no mines have been developed in that area and no party has announced any intention to develop any mines in that area.

VERIFICATION

I, Andrew Blumenfeld, hereby verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Andrew Blumenfeld

Dated this 25th day of January, 2013.

CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of January 2013 served a copy of the Tongue River Railroad Company, Inc.'s Reply to the Petition to Revoke Supplemental Application on all parties of record by first-class U.S. mail, postage prepaid.

David H. Coburn