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January 25, 2013  
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Before  
the  
SURFACE TRANSPORTATION BOARD

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Finance Docket No.  
30186

TONGUE RIVER RAILROAD COMPANY - RAIL  
CONSTRUCTION AND OPERATION-MILES CITY TO ASHLAND  
MONTANA

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**PETITION FOR RECONSIDERATION**

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## **INTRODUCTION**

Petitioners Northern Plains Resource Counsel and Rocker Six Cattle Company (hereafter Northern Plains), pursuant to 49 C.F.R. § 1115.3, respectfully request that the Surface Transportation Board (“Board” or “STB”) expeditiously reconsider its January 4, 2013, service date January 8, 2013, Order accepting the Tongue River Railroad Company, Inc.’s (“TRRC”) Rail Construction and Operation- In Custer, Powder River and Rosebud Counties, Montana Supplemental Application. This Board’s decision errs as a matter of law. This petition for reconsideration explains how the Board’s decision involves material error because 1) it accepts TRRC’s Supplemental Application even though TRRC failed to provide the information required by the Board’s November 1, 2012 decision, and 2) it was decided before the 20 day reply period and thus, failed to consider Petitioners’ January 7, 2013 filing.

Northern Plains asks that the Board reconsider its acceptance of the TRRC Supplemental Application and provide a decision on the merits of the Petition to Revoke before deciding whether to accept the Supplemental Application. As stated in the attached copy of the Petition to Revoke, the Supplemental Application lacks any evidentiary foundation upon which to create a record to process the application and make a Public Convenience and Necessity determination. TRRC does not justify a need for the rail line for either domestic or international markets. TRRC presents a new route and hints at a fundamental change in the purpose of the rail line. The TRRC I proceeding is so badly out-dated that the Board, as the protector of the public interest, is obliged to require TRRC to begin anew.

### **I. The Standard for Reconsideration**

The Board has the authority to reconsider its January 4, 2013 decision accepting TRRC’s Supplemental Application, and should do so because the STB’s “prior action involves material

error.” 49 C.F.R. § 1115.3(b)(2). In addition, the STB’s “prior action will be affected materially because of new evidence [and] changed circumstances.” 49 C.F.R. § 1115.3(b)(1).

On October 16, 2012, TRRC submitted a Revised Application to the Board seeking approval to construct and operate a rail line previously approved by the Board’s predecessor, the Interstate Commerce Commission (ICC), in 1986. Tongue River Railroad Company, Inc. Rail Construction and Operation in Custer, Powder River, and Rosebud Counties, Mont. Revised Application for Construction and Operation Authority. In response to TRRC’s application, the Board issued a decision on November 1, 2012, which directed TRRC to provide a sufficient record for the Board’s review including any information from its 1983 application that is still relevant and that it wanted the Board to consider and any additional evidence and argument in support of the transportation merits of the line. STB Finance Docket No. FD 30186 November 1, 2012 Decision, p. 3. Instead of supplementing its October 16, 2012 application as the STB decision requested, TRRC used its Supplemental Application to propose an entirely new route, the Colstrip Alignment. Revised Application for Construction and Operation Authority, p. 2.

Northern Plains timely filed a Petition to Revoke the Revised Application because it flaunts the requirements of the STB’s previous orders requiring TRRC to submit adequate information establishing the purpose and need for the new construction. As set forth in Northern Plains’ Petition to Revoke, which, along with the supporting Verified Statement of Gerald Fauth and Economic Report of Dr. Thomas Power are incorporated herein and made a part of the record governing this Petition, the Supplemental Application fails to provide any basis for asserting a for the rail line, and hides the true intent of the project to transport coal to west coast terminals for export. Northern Plains has appended to this petition the Petition to Revoke the Revised

Application as well as the Verified Statement of Gerald Fauth and the Economic Report of Dr. Thomas Power.

A second basis for reconsideration stems from the fact that the Board's January 4, 2013 decision involves material error because it cut short the 20- day reply period following the filing of TRRC's Revised Application, and thus failed to consider Petitioner's January 7, 2013 petition. According to STB regulations, a party may file a reply or motion addressed to any pleading within 20 days after the pleading is filed with the Board. 49 C.F.R. § 1104.13. TRRC submitted its Supplemental Application to the Board on December 17, 2012. Using the regulations' method for computing deadlines, Petitioners had until January 7, 2013 to file a pleading in response to the application. *See* 49 C.F.R. § 1104.7. On January 7, 2013 Petitioners filed a petition with the Board (filing no. 233647) requesting that the STB strike TRRC's Supplemental Application and that the Procedural Schedule set forth in the Board's Order served November 1, 2012 be vacated. In addition, Petitioners requested that all further proceedings under NEPA be held in abeyance. *Petition to Revoke Supplemental Application*, p. 18. Because the Board decided to accept TRRC's application on January 4, 2012, it could not have considered the evidence put forth in Petitioners' January 7, 2013 filing. Additionally, by serving the decision on January 8, 2013, the decision may have the effect of mooting the otherwise timely Petition to revoke. Thus, the STB, in its January 4, 2013 decision unlawfully cut off Petitioners' right to reply to TRRC's Supplemental Application, and may have obviated the need for TRRC to respond in opposition as required by STB rules.

TRRC's revised and supplemental applications have been filed under the reopened TRRI proceeding. Both of these applications invoke a significant amount of new evidence and changed circumstances compared to TRRI. *See* 49 C.F.R. § 1115.3(b)(1). First, there are new owners of

TRRC; BNSF, ARCH, and Mars now own TRRC. Second, TRRC now proposes an entirely new line. In its Supplemental Application, TRRC proposes as its preferred alignment the Colstrip Alignment as opposed to the Miles City alignment previously proposed. Supplemental Application for Construction and Operation Authority at p. 2. Finally, the purpose of the line is fundamentally changed from railroad previously proposed under TRRI. TRRC's Supplemental Application mentions Asian coal export only in vague terms and fails to discuss Arch Coal's plans to increase its export program or BNSF's plans to improve its rail capacity on lines heading towards Western U.S. export terminals. This radical shift portends potentially huge impacts on local communities and other shippers, yet TRRC avoids mention of these impacts by obfuscating the purpose of the railroad. These material changes must be addressed in a new proceeding; TRRC I of course does not even address Asian export as a focus of Powder River Basin coal.

## **II. Relief Requested**

Petitioners request that the Board expeditiously reconsider its January 4, 2013 decision accepting TRRC's Supplemental Application in light of the evidence presented in Petitioners' January 7, 2013 filing, and address that Petition on its merits. In addition, Petitioners request that the Board strike TRRC's Supplemental Application and that the Procedural Schedule set forth in the Board's Order served November 1, 2012 be vacated, and TRRC be ordered to file a new application.

Dated this 25 day of January, 2013

/s/Jack R. Tuholske

Attorney for Northern Plains Resource Council and Rocker Six Cattle Company

**Certificate of Service**

I certify that the foregoing has been served on all parties of record on this 25 day of January, 2013, as provided by the Board's rules.

/s/Jack R. Tuholske

Before the  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 30186

TONGUE RIVER RAILROAD COMPANY - RAIL CONSTRUCTION  
AND OPERATION-MILES CITY TO ASHLAND MONTANA

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**PETITION TO REVOKE SUPPLEMENTAL APPLICATION<sup>1</sup>**

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**I Preliminary Statement**

At issue here is an application for new construction. Though approval is sought for a relatively short new line (42 miles), by a new entity, the Tongue River Railroad (TRR), in reality this line is a major addition to the BNSF rail system that will allow BNSF to haul significant quantities of Montana coal to West Coast export terminals. The large coal volumes accessed through the TRR will cause significant down line impacts, both environmental and transportation-related, on farms and ranches in southeastern Montana, and on rail infrastructure and communities in Montana and throughout the Pacific Northwest. Though the application was filed under Finance Docket 30186, a 30-year-old proceeding for a never-constructed rail line

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<sup>1</sup> Northern Plains is appending a new version of the Petition to Revoke the Supplemental Application to correct typographical errors.

heading east, the current proposal as revealed in the Supplemental Application bears little resemblance to the old TRR line, and should be captioned under a new Finance Docket proceeding.

Northern Plains Resource Council Inc., and Wally McCrae/Clint McCrae dba the Rocker Six Cattle Company, parties to the above captioned proceeding, hereby petition the Surface Transportation Board (the Board or STB) to revoke the Supplemental Application filed by TRR on December 17, 2012.<sup>1</sup> As explained below, the Supplemental Application proposes a railroad that is so fundamentally different from the line approved in 1986, that any further proceedings under this 30-year old caption are, frankly, an attempt by TRR and BNSF to perpetrate a farce upon the public. The new rail line uses only a fraction of the line approved in Finance Docket 30186. Because most of the coal will be shipped west for export instead of east, where the utility-based coal market has collapsed, this rail line will have significant impacts on the entire BNSF transportation system, affecting dozens of communities in the Northwest. It affects Montana landowners who were not at risk from the 1986 TRR project. This proposal will create a suite of environmental and transportation problems that neither this Board, nor the public, have ever considered. Moreover, the Supplemental Application is so fraught with procedural defects, vague representations, and inaccuracies that it cannot serve as the basis for this Board to make an informed decision.

It is a waste of this Board's and the public's time and resources to continue to address this matter under the guise of a 1986 decision that has little bearing on the rail road that TRR

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<sup>1</sup>Northern Plains includes herein a Verified Statement by Gerald Fauth and a Report by economist Dr. Tom Powers. Northern Plains has had a reduced capacity to respond to the Revised Application because it was filed just before the holiday season, and reserves the right to further supplement the record as appropriate. Northern Plains notes that TRR just recently supplemented its Revised Application.

proposes to build today. The caption alone - Miles City to Ashland - demonstrates why using the 1986 Finance Docket as a basis for this proceeding is erroneous. The proposed route will not go within miles of Miles City. The Supplemental Application should be revoked. If TRR wants to proceed with new construction from Ashland to Colstrip, Montana, as it now suggests, TRR should submit a proper application in a new proceeding reflecting the true nature of the project.

## **II. Background**

To understand why the current proposal so fundamentally differs from the previously approved rail lines, some background is necessary. The original application in this Finance Docket was filed 30 years ago, in 1983. The Miles City to Ashland segment, now known as TRR I, was approved in 1986.<sup>2</sup> The purpose of that 89-mile line was to haul coal from proposed mines near Ashland, Montana to the Burlington Northern (now BNSF) main line at Miles City, where the coal would be transported to power stations in the Upper Midwest. The overwhelming basis for approving the TRR I was to serve markets in the Upper Midwest with low sulphur coal.<sup>3</sup> TRR I was never constructed.

In 1989, TRR filed an application to extend TRR I for another 41 miles from its southern terminus at Ashland to existing coal mines near Decker, Montana. This line, known as TRR II, would have connected to an existing BNSF rail line that serves the Decker area via a different route. The purpose of TRR II was to connect to TRR I and capture coal already being shipped

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<sup>2</sup>See Finance Docket 30186, Tongue River Rail Road- Rail Construction and Operation in Rosebud, Custer and Powder River Counties (ICC served May 9, 1986) (hereafter 1986 Decision).

<sup>3</sup>A smaller portion of the coal in TRR I may have gone to power plants in Oregon and Washington, plants which are now slated to close soon. None of it was destined for export.

from the Decker area, including northern Wyoming, to the Upper Midwest and Great Lakes. TRR I and II together offered a shorter route to Upper Midwest markets than the existing rail lines from Decker, and hence a created a potential savings for coal purchasers. *See generally* TRR II DEIS at p. 1-1. After another protracted NEPA process, TRR II was approved seven years later in November 1996. A second Environmental Impact Statement was approved and a second Certificate of Public Convenience and Need (PCN) was granted. Northern Plains, Native Americans and rail workers unions filed a petition for judicial review of the NEPA documents and the PCN determination at the Ninth Circuit.

TRR II was routed mostly along the Tongue River Valley, except for a detour known as the Four Mile Creek Alternative, which the STB approved to lessen damage to the environmentally sensitive Tongue River Canyon. BNSF did not like the Four Mile Creek Alternative. Shortly after TRR II was approved, TRR filed another application to modify the route approved in TRR II. Known as the "Western Alignment," this proceeding was captioned as FD 30186 Sub-No.3, and is referred to as TRR III. The route of the Western Alignment is shown in Figure 1-5 in the TRR III DSEIS. After years of additional delay, TRR III, and a Supplemental Environmental Impact Statement, were approved in 2007.<sup>4</sup> In its approval of both TRR II and III, the STB reopened TRR I to address additional matters, because both TRR II and III were dependent upon TRR I.

It is undisputed that the focus of TRR I, II and III was to ship coal east. In its 1996 decision approving TRR II, the Board described the combined TRR I and II as a "130-mile line is

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<sup>4</sup> 2007 WL 2936132 (S.T.B.) (2007) FD No. 30186 Sub. No.3, Tongue River Railroad Construction- Western Alignment (served October 9, 2007).

to provide a new, shorter route for the carriage of coal from the Wyoming Powder River Basin to *eastern* destinations." TRR II, 1 STB 809, at p. 1 (emphasis added). The Board noted that according to TRR, "the present market for the coal that TRR would haul consists of electric utilities and industries in Minnesota, Wisconsin, and Michigan." TRR II, 1 STB 809, at p. 3. The Board found these eastern markets to be pivotal in establishing a need for the rail road:

We also conclude that TRR has shown the public demand necessary to support this application. Proponents of the project include NERCO, a large coal producer; Detroit Edison; MER, a subsidiary of Detroit Edison; and Dairyland [a Wisconsin utility], all of whom favor the project.

TRR II, 1 STB 809 at p. 9.

That the TRR was being built to haul coal for eastern markets remained the focus of the project 10 years later, when TRR III was approved. In the Board's words for TRR III, "[A]ccording to TRR, the coal would go to the Upper Midwest and Great Lakes region, including Minnesota, North Dakota, Wisconsin, Michigan and as far east as Buffalo, New York." TRR III decision at p. 7. All of the power companies that urged approval of TRR II and III were from the Midwest and Great Lakes area. *Id.*; *See also* Verified Statement of Victor Wood, (filed in TRR II, expounding in depth on the Midwest coal markets that TRR would serve). No letters of support were provided from West Coal users and nothing was mentioned about the purpose of the rail line being to carry coal for export to China. Coal export to China was not on the railroad's agenda in the 1990s.

Both TRR II and III were the subject of consolidated petitions for judicial review. TRR II was appealed to the Ninth Circuit in 1997. That appeal was held in abeyance following the application for TRR III. TRR III was appealed in 2007. The petitions were consolidated and the

case was finally heard in 2011 after years of wrangling over the administrative record. The Ninth Circuit ruled in favor of Northern Plains on several (but not all) environmental issues, and in favor of the Unions on one transportation issue, remanding the matter back to STB. *Northern Plains Resource Council v. Surface Transportation Board*, 668 F.3d 1067 (9<sup>th</sup> Cir. 2011). The Board is referred to this opinion for a detailed summary of the entire procedural history of the TRR. *See also* Verified Statement of Gerald Fauth at pages 6-7.

Following the Ninth Circuit's decision, TRR announced that BNSF, Arch Coal, and billionaire Forest Mars had acquired TRR, with BNSF now the explicit operator and dominant player in the railroad. TRR also announced that it was abandoning the rail line approved in TRR II and III, and would build only the line from Miles City to Ashland. Nonetheless, TRR asked the STB to continue to address the remand under the abandoned proceeding for TRR III in Finance Docket 30186 Sub. No.3.

On June 18, 2012 the STB issued a comprehensive Order addressing the Ninth Circuit's remand. The STB rejected the attempt to shoehorn the on-going proceedings into the now-defunct TRR III, as TRR/BNSF urged. Instead, the STB reopened TRR I, and explained:

The recent Ninth Circuit decision and TRR's new ownership and modified plans all constitute changed circumstances that warrant reopening. For the reasons discussed below, the Board will dismiss the Tongue River II and Tongue River III proceedings and will reopen Tongue River I. The Board will also require TRR to file a revised application that presents the railroad's current plans for the railroad it still intends to build and the information required by 49 C.F.R. pt. 1150. In addition, the Board will conduct a new environmental review that is consistent with the court's decision rather than a supplemental environmental review based on the three prior environmental reviews that began in the 1980s.

Order served June 18, 2012 at p. 2.

TRR filed its revised application for TRR I on October 17, 2012. TRR stated that is was

building a rail line from Miles City to near Ashland, Montana with 2 spurs connected to planned coal mines. TRR's application was deficient on its face because it contained precious little information about TRR's justification for the line. TRR relied almost entirely on the I.C.C.'s 1986 approval, and treated these revised proceedings like a pro forma process, even though market-conditions for the railroad have changed dramatically in the past 30 years. Even though the public statements and SEC filings from the coal companies stated that Montana coal was headed primarily for export, TRR pretended that the 1986 PCN finding predicated on shipments to the Midwest were still valid. The Board rejected the application *sua sponte*, chastising TRR for its cursory attempt to gain re-approval of the 1986 line without justifying it:

TRR's October 16, 2012 revised application can be read as merely asking the Board to authorize certain refinements to the line approved in 1986 in Tongue River I. Accordingly, we believe it necessary to clarify at the outset that we intend to consider in this proceeding TRR's current plans for the entire 83-mile line that TRR presently intends to build. We make clear here that we reopened the 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.

Order served November 1, 2012 at p. 2.

The Board did the right thing by rejecting the Revised Application and ordering a supplement to create an adequate record. However, TRR has flaunted the Board's Order by both fundamentally changing the nature of the rail project and still failing to provide an adequate record.

TRR filed its revised application on December 17, 2012. As discussed below, the Revised Application bears little resemblance to the line approved by the I.C.C. in TRR I. It takes

an entirely new line, headed West to the export markets. TRR arbitrarily clings to the 1986 rationale and urges the Board to simply rubber-stamp its 30-year-old decision. At the same time TRR barely mentions the true purpose of the railroad, to provide a more direct line to West Coast export markets. TRR fails to alert the Board or the public to the major impacts that this line may have on the nation's rail transportation infrastructure in the Pacific Northwest.

**III. The Current Proposal Bears Little Resemblance to the Railroad that the STB Approved in 1986.**

**A. The Colstrip-Ashland line is geographically distinct from the Miles City line approved in 1986.**

The Board need not look further than the caption in this proceeding to see why the 1986 decision in TRR I is not an appropriate proceeding to continue to evaluate TRR's latest proposal. Finance Docket 30186 is captioned "Miles City to Ashland." No railroad will be built from Miles City to Ashland. The new proceeding should be captioned "Rail Construction – Ashland to Colstrip, Montana." Such a proceeding would be an accurate description of what TRR seeks.

Not only is the terminus of the rail line different, TRR abandons 75% of the line that was approved in 1986 and instead seeks approval for a new and different line. Only 19 miles of TRR I will be used. Moreover, the new line will connect to, and revitalize a nearly defunct BNSF spur in Colstrip that will connect to the BNSF main line near Forsythe, Montana. TRR I was designed to connect with the BNSF main line in Miles City to provide a route to the Upper Midwest coal plants that were the intended destination for the coal. The new proposal originates at Otter Creek and heads mostly west, pointing like an arrow to the West Coast export destinations. *See* Fauth Verified Statement – Map of TRR I and Colstrip-Ashland Proposal.

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 railroad approved in 1986."

Supplemental Application at p. 2. The statement is simply not true. The map included in the Verified Statement of Gerald Fauth depicts the TRR I and Colstrip routes, which bear little in common. The Colstrip route impacts a whole new suite of landowners. The effects on the Rocker Six Cattle Company, for example, will be devastating compared to the line in TRR I. Landowners who are not parties of record (and had no reason to become parties under all prior proceedings in Finance Docket 30186) are significantly impacted. Because the Colstrip-Ashland line *is* different from TRR I, it is a charade for BNSF to ask the Board to continue to process it under the old proceeding.

B. The purpose of the Colstrip to Ashland line is fundamentally changed from the railroad STB approved in 1986 in TRR I.

A fundamental shift in the demand for Powder River Basin (PRB) coal has taken place in the last few years, and with it, the purpose behind the TRR. As detailed in the report entitled "Changes in the Market for Montana Powder River Basin Coal between 1986 and 2012" by Dr. Thomas Power (Power Report), the assumption that Montana PRB coal is an attractive option for coal-fired electrical plants, while perhaps true in 1986, is now false.

The reasons why the domestic market for Montana coal has shrunk, and will continue to shrink, are detailed in the Power Report. Coal faces ever-increasing regulatory hurdles, including New Source Performance Standards for green-house gases, and increased regulation concerning haze, particulates and mercury. Coal is increasingly unattractive to burn in the U.S. By contrast, natural gas prices have plummeted in recent years as supplies multiply from new hydro-fracking technologies. Natural gas enjoys a significant competitive advantage over coal.

Power Report at p. 4. The result is a significant and continuing decline in the use of coal for electrical generation. The decline is most pronounced in the Upper Midwest, the very markets originally targeted for. As Dr. Power explains, "U.S. Energy Information Administration projections indicate a decline in demand in the near term and that there will not be a return to 2010 levels of consumption in those markets for two decades." Power Report at p. 1.<sup>5</sup>

In contrast to flagging U.S. coal demand, international demand, especially in China and the Pacific Rim, is skyrocketing. PRB coal is still inexpensive to mine, and is attractive for export markets. Montana PRB coal enjoys a competitive advantage to West Coast export markets. Not surprisingly, Arch coal, a 1/3 owner in TRR and the 100% owner of the coal properties at the Otter Creek terminus for the TRR, has told its shareholders that it is focusing on Asian export markets:

With much of coal's growth occurring outside U.S. borders, we laid the foundation for future international growth by adding significant export capacity to further unlock the value of our metallurgical and thermal coal assets. Specifically, we invested in a proposed export facility in the state of Washington to complement our equity investment in the DTA export terminal in Virginia. We also locked up dedicated throughput space at ports along the Gulf of Mexico, the Eastern Seaboard and the western Canadian coast. Supporting these investments, we established new offices in Singapore and London to expand our customer relationships and increase our global breadth and depth.

Power Report at p 18, quoting Arch Coal's 2011 shareholder report.

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<sup>5</sup>Dr. Power also demonstrates that the 20-year increase in PRB coal consumption occurred almost entirely in Wyoming because of better access to most of the U.S. coal markets. Montana's PRB coal production has remained flat because its market advantage is almost entirely in the upper Midwest. That is why TRR I, II and III were focused on utilities in Minnesota, Wisconsin and Michigan. That market is now stagnant.

The Washington export facility referred to above is at Longview Washington, and the coal will be delivered via the Tongue River Railroad and the BNSF mainline. Longview is poised to become one of the largest export facilities in the country. BNSF is already making improvements at this facility. Fauth Verified Statement at p. 21.

The University of Montana's Bureau of Business and Economic Research prepared a report in May, 2012 that also concluded that Montana's PRB coal is "better situated to serve these fast-growing Asian Markets." Fauth Verified Statement at p. 16. Indeed, the interest in coal export, for which BNSF is primed to serve, extends to nearly a dozen new or expanded West Coast coal export terminal proposals that have surfaced in the last few years. *See e.g.* Fauth Verified Statement at p. 18.

TRR's Supplemental Application fails to discuss any of this information and thus fails to meet the Board's requirement, made explicit in its June 18, 2012 and November 1, 2012 Orders, that TRR provide current justification for this railroad, to "provide a sufficient record for the Board to review." Order of November 1, 2012 at p. 3. TRR mentions Asian coal export in only vague terms, noting only that "there is a demand for coal overseas." Supplemental Application at p. 21. TRR does not discuss Arch coal's own plans to ramp up its export program, and its just-acquired export terminal. TRR does not discuss the collapse of the coal market in the Upper Midwest, nor the fundamental changes that have occurred in the U.S. domestic coal market in the last few years. TRR provides no letters of interest from any domestic coal-burning utilities. TRR provides no economic analysis of the demand for the coal it intends to haul. The dearth of information is in marked contrast to the elaborate economic data, tonnage forecasts, and market analysis that accompanied earlier TRR applications. *See e.g.*

Verified Statement of Victor Wood (dated April 24, 1992) (filed in FD 30186 Sub. No. 2).<sup>6</sup> TRR clings to the Board's 1986 PCN determination as still valid. By avoiding any substantive discussion of the coal market and intended purpose of the TRR, and by completely avoiding the down-line impacts that the export market will have on the Northwest's rail transportation system, TRR asks the Board to ignore the present realities of the coal market. Supplemental Application at p. 21-22. TRR has failed to provide an adequate record upon which to process this Application and has failed to inform the Board and the public of the impacts of creating an export-oriented rail line.

As discussed in the section below, TRR masks the real purpose of the railroad to avoid addressing the significant down-line impacts that are certain to follow.

C. It is now clear that the TRR is a primarily a BNSF Project.

A final distinguishing feature between the 2012 proposal and the 1986 project analyzed in Finance Docket 30186 is the role of BNSF. Unlike the 1986 proposal, BNSF now has an explicit dominant role in TRR. For the first time, BNSF is a direct owner of the TRR. For the first time, BNSF has confirmed it will operate the TRR. BNSF corporate executives hold two of the four Officer positions in the TRR. Supplemental Application, at p. 13-14. All of the coal that is moved by the TRR line will end up on the existing BNSF spur that is now being upgraded, and will connect to the BNSF main line. Unlike TRR II and III, which targeted moving coal from throughout the Powder River Basin, for which other rail shippers could compete, the new TRR line is completely captured by BNSF.

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<sup>6</sup>The Wood Verified Statement contains an elaborate examination of the coal markets that TRR II intended to serve. These markets are all in the Upper Midwest, underscoring the shift in the coal market that Dr. Power and Gerald Fauth have explained in their submissions herein.

**IV. TRR Understates the Coal Tonnage it Will Haul to Avoid Addressing Down-Line Impacts on the entire BNSF System from Montana to the West Coast.**

TRR also fails to accurately portray the tonnage that the new railroad will add to BNSF's rail infrastructure. TRR informs the Board that it will haul a maximum of 20 million tons of coal per year from the Otter Creek mine. Supplemental Application at p. 17. TRR indicates that, based on 20 million tons per year, it would handle "3.7 loaded coal trains/day." Supplemental Application Exhibit D at p. 2. *See* Fauth Verified Statement at p. 21-22.

TRR's coal tonnage estimates are belied by the application itself. TRR seeks approval for two spurs, one to Otter Creek and the other to the vicinity of rich coal deposits at the proposed Montco mine site. In addition, discussions have occurred with the Northern Cheyenne who own vast coal reserves in this area. None of these are included in the tonnage forecasts. Does TRR intend to build a second spur to nowhere? Of course not; TRR is fully aware of the potential coal mines at Montco and on the Northern Cheyenne Reservation and has built a spur to access those mines. Adding in the likely coal tonnage that will be eventually served by the TRR, but was not discussed in its Supplemental Application, the TRR will eventually carry 40+ millions tons. TRR will use more than eight trains per day to move this coal, pushing the railroad into a new threshold of transportation and environmental analysis that TRR seeks to avoid.

The Board's own evidence on the tonnage served by the TRR proves the point. In a 1996 decision, STB stated that "TRR would still be able to serve the Montco mine, a mine site with an

estimated annual coal production capacity of 38 million tons."<sup>7</sup> Those figures were before Arch Coal began developing Otter Creek, with its estimated 20 million+ tons per year.

The record further establishes that BNSF is undertaking over 200 million dollars in infrastructure improvements in Washington and Montana, including improvements at Arch Coal's new Longview export facility. *See* Fauth Verified Statement at p. 19. The TRR seeks a massive 200 foot right-of-way, giving it the ability for multiple sidings or double tracks throughout its line. The TRR is not a small, isolated rail spur but rather part of a major move by BNSF and Arch Coal to position themselves in the export market. None of this has been disclosed by TRR and BNSF.

By calculating the number of daily train trips at slightly less than eight trains per day, TRR seeks to avoid STB regulations and policy that require a more exacting down-line impacts analysis. *See* 49 C.F.R. 1105.7. The eight-train/day threshold was also the trigger in the DM&E case for extensive down-line impacts analysis. Using this eight-train/day threshold as the lowest estimate, the SEA put together an EIS on the proposed DM&E railroad, which the STB used in its 2002 decision to grant full approval for the construction and operation of the rail line. *Dakota, Minnesota and Eastern Railroad Corporation Construction into the Powder River Basin*, 2002 WL 121210 (S.T.B.) (Jan 28, 2002). It was this 2002 decision that was challenged in court and vacated by the Eight Circuit in the *Mid States* case in 2003. In that decision, the Court explains that NEPA requires agencies to consider any adverse environmental impacts of their major actions and that CEQ regulations require that both direct and indirect impacts be

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<sup>7</sup>STB FD 30186 (Sub-No. 2), *Tongue River Railroad Co.--Rail Construction And Operation--Ashland To Decker, Montana*, served November 6, 1996, 1 STB 809 at p. 14.

addressed. *Mid States Coalition for Progress v. STB*, 345 F.3d 520, 549 (8<sup>th</sup> Cir. 2003). Based on this analysis of NEPA, the Court determined that degradation in air quality is something that must be addressed in an EIS if it is reasonably foreseeable. *Id.* The Court dismissed DM&E's argument that an air quality assessment would be too speculative and described that the extent of the effect would be speculative, not the nature of the effect. *Id.* Thus, the Court was able to order DM&E to consider the effects of increased coal consumption using the eight-train/day threshold applied by the SEA. By using a figure of just under eight trains per day, TRR seeks to avoid extensive down-line analysis.

However, using a more realistic figure<sup>8</sup> of 48.5 million tons, Fauth estimates the number of trains per day at 18.02. *See* Fauth Verified Statement, Table 1 at p. 22. The precise number of trains is unimportant; what is important is that TRR has failed to provide accurate estimates. Using the old figures from the 1986 EIS that TRR still relies upon, and adding the tonnage from the second spur, it is clear that the eight-train/day threshold will be exceeded. Indeed in the Environmental Report TRR submits, the TRR I line was projected to "handle as many as 25 trains per day." Supplemental Application Exhibit H at p. vi. Moreover, unlike the increased train traffic in TRR I and II, and the DM&E, where many of the impacts would be distributed over a wide geographic area because of multiple coal markets, the downline impacts here will be focused on BNSF's main line to the West Coast. Communities like Spokane, Washington, Sand Point Idaho, and Billings, Montana could be overwhelmed by significant increases in train traffic that has never been subject to public need and convenience criteria. By masking the true nature

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<sup>8</sup> Because TRR provided *no information* about export capabilities, Northern Plains used the port capacity of Arch Coal's Longview terminal (48.5 million tons) as all of that coal will be hauled on the BNSF main line and would likely originate in Montana.

of the TRR and avoiding down line impacts, TRR leaves the affected public in the dark, though these communities will bear the economic and environmental externalities of coal export, just like the ranchers along the TRR will bear the construction and operation impacts.

**V. The Environmental Report is Deficient and Doesn't Comply with STB Regulations.**

When TRR submitted its Supplemental Application to the STB, it was *required* to submit to the Board an Environmental Report on the proposed action. *See* 49 C.F.R. § 1105.7(a). In its application under the Environmental Section, TRR uses Exhibit H to meet the requirements of section 1105.7 of the STB's regulations. Exhibit H contains nothing more than some pages from the 27 year-old EIS in TRR I. This ancient EIS does not meet the exacting requirements for the Environmental Report under the regulations.

Exhibit H is part of the 1986 EIS that approved a rail line from Miles City to Ashland, a project that has now been abandoned. As a result, the 1986 EIS treats the Colstrip Alignment, which is the proposed action under the current application, as an alternative, and therefore does not provide the level of detail necessitated by the regulations. In addition, because Exhibit H is part of an old document, it does not include a certification from TRR that it sent the Environmental Report to the appropriate agencies and that it consulted with those agencies in preparing the report. *See* 49 C.F.R. § 1105.7(c).

Moreover, the content of Exhibit H fails to meet the CFR requirements. Under its section on transportation, TRR does not estimate the amount of traffic that will be diverted as required by the regulations. *See* 49 C.F.R. § 1105.7(e)(2); Exhibit H at p. x. Additionally, under its land use section, TRR fails to state whether the proposed action is consistent with existing land use plans

as required. *Id.* at § 1105.7(e)(3); Exhibit H at p. ix. Under its energy, air, and noise sections, TRR ignores the requirements of the regulations altogether. For example, in its section on energy, TRR fails to describe the effect of the Colstrip Alignment on transportation of energy resources or state whether the TRR will result in an increase or decrease in overall energy efficiency. *See id.* at § 1105.7(e)(4); Exhibit H at p. x. In its section on air, TRR fails to address whether the proposed action will result in any of the listed scenarios, including whether the Colstrip Alignment will result in an increase in rail traffic of at least 100% or an increase of at least eight trains a day on any segment of the rail line. *See id.* at § 1105.7(e)(5); Exhibit H p. at x. Additionally, in its section on noise, TRR fails to explain whether the proposed action would result in an incremental increase in noise levels or identify sensitive receptors. *See id.* at § 1105.7(e)(6); Exhibit H p. at x-xi.

Exhibit H also fails to meet the requirements set out for the safety, water, and proposed mitigation sections of the Environmental Report. In its section on safety, TRR fails to fully describe any effects that the TRR would have on public health and safety, including vehicle delay time at railroad grade crossings. *See id.* at § 1105.7(e)(7); Exhibit H at p. xi. TRR's water section completely fails to follow the requirements of the regulations because they do not state whether permits will be required under either Section 404 or 402 of the Clean Water Act, or whether the Colstrip Alignment would interfere with applicable Federal, State, or local water quality standards. *See id.* at § 1105.7(e)(9); Exhibit H at p. xi. Also, while Exhibit H mentions a mitigation plan several times, it contains no description of actions that are proposed to mitigate adverse environmental impacts or indicate why the proposed mitigation is appropriate. *See id.* at § 1105.7(e)(10); Exhibit H at p. xiv.

Of course the greatest flaw in the Environmental Report is that it fails to reflect the true nature of the new project. TRR's cut and paste job using a 27-year old document underscores its effort to convince the Board that its rail line is simply a redo of the line that was approved in 1986. But the configuration and purpose of the TRR in 2012 is vastly different from the railroad approved in 1986.

In sum, by using Exhibit H as its Environmental Report, TRR is attempting to use its old application and I.C.C. approval to once again undermine the fact that this is a new project that will have significant environmental impacts. Exhibit H on its face fails to meet the majority of the requirements set out by the STB regulations. TRR should be required to submit a new Environmental Report that meets the requirements of Section 1105.7 as they pertain to the Colstrip Alignment.

#### **VI. Conclusion and Request for Relief.**

Northern Plains Resource Council Inc, and Wally McRae/Clint McRae dba Rocker Six Cattle Company hereby request that the Board order TRR's Supplemental Application to be stricken. The Petitioners further request that the Procedural Schedule set forth in the Board's Order served November 1, 2012 be vacated, and that all further proceedings under the National Environmental Policy Act be held in abeyance pending further order of the Board.

Dated this 7<sup>th</sup> day of January, 2012



Jack R. Tuholske

Attorney for Northern Plains and Rocker Six Cattle Company

**Certificate of Service**

I certify that the foregoing has been served by U.S. mail on all parties of record on this 7<sup>th</sup> day of January, 2013.

Gal R. White

***Changes in the Market for  
Montana Powder River Basin Coal  
between 1986 and 2012***

**a report prepared for the  
Northern Plains Resource Council**

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Donovan S. Power, M.S.  
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**November 2012**

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## Summary

In the Tongue River Railroad's new application to the U.S. Surface Transportation Board, the Railroad asserts that: "Although US domestic electric utilities represent the prime demand potential for Otter Creek coal that the [Tongue River Railroad Company] would haul, additional tonnages could be anticipated for export markets." (Exhibit D, Operating Plan, p. 2) This is a seriously misleading description of the market for the coal the Railroad would carry, suggesting as it does that the market for that coal remains largely the same as when the Railroad originally was authorized more than a quarter of a century ago.

In fact, as this report will document, the market for Tongue River Valley coal has changed dramatically between 1986 and 2012:

- i. **The growth in demand for PRB coal has decelerated dramatically since 1986.** The five-year average annual growth rate in the demand for PRB coal in 1988, two years after the TRR initially received its permits, was almost 9 percent. For the next thirteen years, the average annual growth rate across five-year periods was, in general, above five percent. In 2002 it fell to about 3 percent; in 2005 it fell to about 2 percent. In 2009 it fell to 1 percent. And for the 2005 to 2010 period it fell to zero percent.
- ii. **The market for Tongue River Valley coal has not been sufficient to justify developing that coal or building the TRRR for the quarter of a century since the TRRR was originally authorized.** The limited domestic U.S. market in the upper Midwest for the Otter Creek coal the TRRR would carry was recognized in the appraisals and evaluations that were conducted when that coal was put up for lease in 2009.
- iii. **Coal demand in the historical markets for PRB coal, the upper Midwest, are projected to decline.** The U.S. Energy Information Administration projections indicate a decline in demand in the near term and that there will not be a return to 2010 levels of consumption in those markets for two decades.
- iv. **The reduced U.S. domestic demand for coal for electric generation is likely to continue for several reasons:**
  - a. The total life-cycle cost of natural gas fueled electric generators has been lower than the costs of coal-fired generators for almost a decade. As a result new electric generators have largely been fueled by natural gas.
  - b. Natural gas-fueled generators are more flexible in adapting to demand or intermittent renewable energy supply than are coal-fired generators.
  - c. Natural gas fueled generators have significantly fewer environmental problems and environmental costs associated with them, including lower carbon emissions.
  - d. In recent years the cost of natural gas has declined while the cost of coal has risen. Projections indicate this pattern is likely to continue in the near term.

- e. Many older and less efficient coal-fired generators are scheduled for retirement because of their high cost of operation and difficulty in meeting contemporary environmental standards.
  
- v. **The primary potential source of new demand for PRB coal is not domestic U.S. markets but Asian markets served by new or expanded west coast coal ports and upgraded rail links from the PRB to those west coast ports.**

## Introduction

The Tongue River Railroad (TRRR) was initially authorized by the Interstate Commerce Commission (ICC) in 1986. Twenty-six years later the TRRR had not been built and as a result of a decision by the ICC's successor regulatory agency, the Surface Transportation Board (STB or Board) in June 2012, the sponsors of the TRRR were required to submit a new application because of the lengthy period of time since the TRRR had been initially authorized.

In the TRRR's new application for authority to construct and operate the proposed railroad, the TRRR stated that: "Except as set forth herein, all of the facts and findings relied upon by the Board, including the environmental report, are largely unchanged from the 1986 Decision..." (p. 2-3) In addition, the new application asserts that: "Although US domestic electric utilities represent the prime demand potential for Otter Creek coal that the [Tongue River Railroad Company] would haul, additional tonnages could be anticipated for export markets." (Exhibit D, Operating Plan, p. 2)

In fact, as will be shown below, the coal market that the TRRR can be expected to serve has changed dramatically since the mid-1980s when the TRRR was proposed and authorized. Rather than serving U.S. domestic markets, the TRRR and the Otter Creek coal it would carry, will primarily serve Asian export markets. This dramatic change in U.S. coal markets is recognized by Arch Coal who holds the lease on the Otter Creek coal as well as the U.S. Department of Energy. That change in the market for Otter Creek and other Powder River Basin (PRB) coal will require the building of coal ports on the Columbia River and the west coast of the United States and will involve in a significant increase in rail traffic between the PRB and the U.S. west coast and upgrades of the railroad infrastructure between Miles City and the west coast.

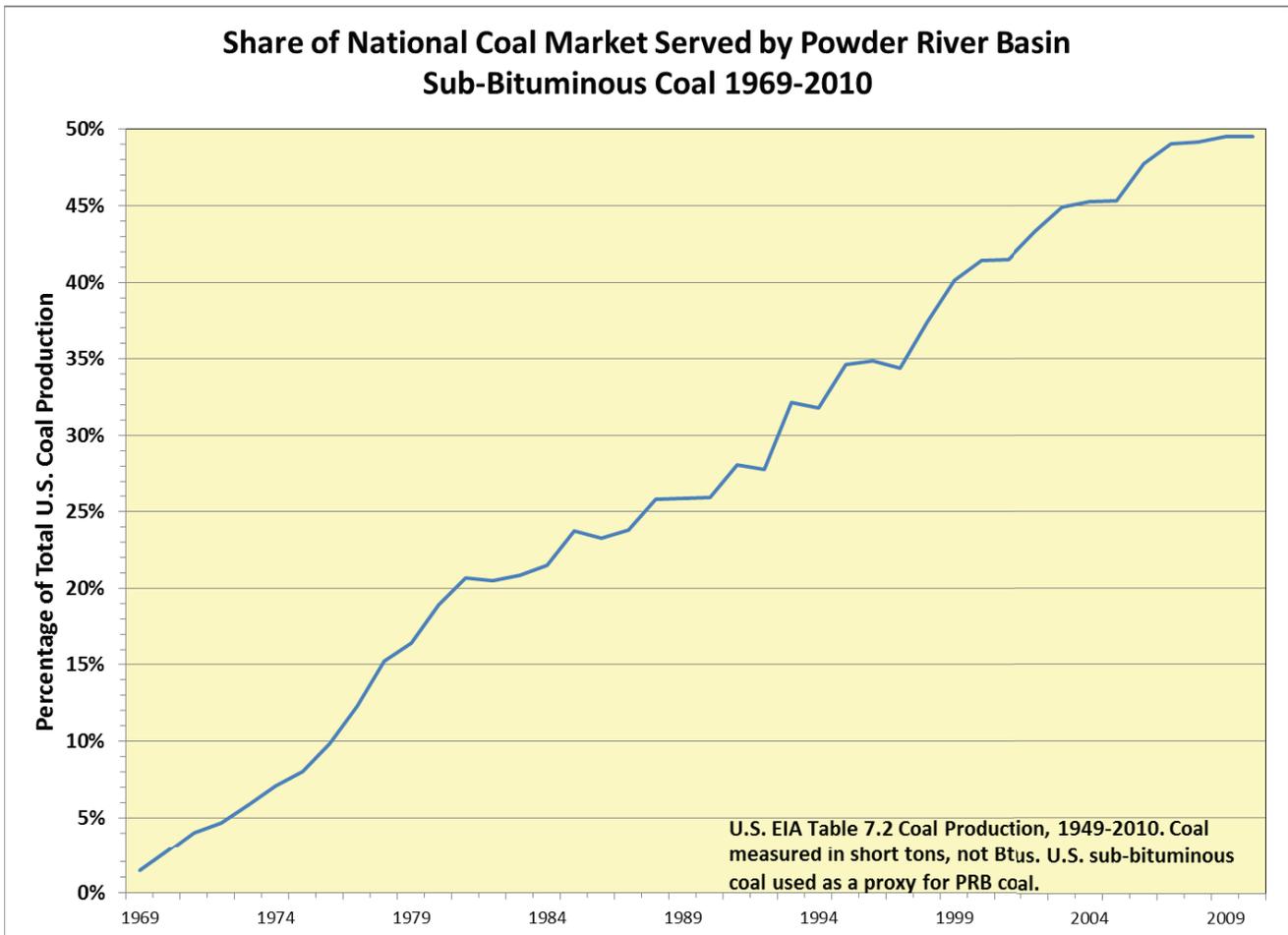
## Dramatic Changes in U.S. Coal Markets between 1986 and 2012

Until recently the PRB coal fields seemed destined to continue to rapidly expand coal production to serve domestic American demand for coal to fuel electric generators to the south and east of Wyoming

and Montana. PRB coal production has expanded so rapidly over the last 40 years that it went from being an insignificant source of coal for U.S. markets to the dominant national coal fields. By 2007 the PRB coal was the source of almost half the coal burned in the U.S. measured in terms of tonnage. See Figure A. The low sulfur content and very low mining costs allowed PRB coal to successfully compete with other American coal sources across a good part of the continental United States.

However, at the end of the twentieth century, technical and economic changes were laying the basis for significant changes in the U.S. market for coal.

Figure A



## Improvements in Gas-Fueled Electric Generation

In general, the capital costs associated with coal-fired generation are substantially higher than the capital costs associated with natural gas-fired generation. It also takes a considerably longer period of time to design, site, permit, and construct a coal-fired facility. This adds to the capital costs and capital risk. The trade-off that can justify these higher capital costs is the potential that coal is a much less

expensive fuel that could be converted to electricity more efficiently than early single-cycle natural gas plants. That is, the higher capital costs were incurred to reduce the fuel cost per unit of electricity produced. This is a front loaded investment that takes decades of continuous generation to pay off which increases the investment risk and recently led capital markets to be leary of investments in coal-fired generation.

Put the other way around, one attraction of using natural gas to generate electricity is that the capital investment necessary is significantly lower, and the facility can be built more quickly and in smaller increments without sacrificing efficiency. That lower capital cost and investment risk can justify the higher fuel cost per unit of electricity generated by using natural gas as the fuel.

It has been improvements in the efficiency of natural gas-fired generators in converting natural gas into electricity, the lower investment costs, and the smaller modular units whose capacity additions can be better timed to meet load growth that have helped support the shift in new electrical generating capacity from coal to natural gas fuel. Fewer air quality problems associated with the combustion of natural gas also have reduced the costs associated with using natural gas by both reducing the investment in air pollution abatement equipment and avoiding the reductions in the efficiency of converting the thermal energy into electricity that air pollution controls can cause.<sup>1</sup>

Finally natural gas-fired electric generators are more flexible in adapting to changes in the need for more or less generation. Coal-fired plants have to be more slowly ramped up and down. In addition, the efficiency of natural gas-fired plants does not deteriorate as quickly as they are ramped down. This flexibility makes natural gas-fired plants good complements for renewable resources such as wind and solar whose production can fluctuate significantly within relatively short period of time. Given that recently many states have been adopting “renewable portfolio standards” that require electric utilities to serve a specified percentage of their load with renewable resources, natural gas-fired generators have become more attractive because they are a more cost-effective complement to intermittent renewable resources than coal.

The Annual Energy Outlook 2011 projected significant differences between the levelized cost of a megawatt hour from a coal-fired generator compared to a gas-fired combined cycle generator: \$102 for coal versus \$70 for natural gas, a cost advantage for the natural gas plant of over 30 percent. Natural gas plants had the levelized cost advantage despite having variable operating costs (fuel and variable operations and maintenance costs) that were almost twice as large on a per unit of electrical output basis. The natural gas combined cycle plants offset that fuel cost disadvantage with capital costs that were only about a quarter of those of a coal-fired plant on a megawatt hour basis.<sup>2</sup> On net, the total cost per unit of electricity produced was lower for gas-fueled electric generation. See Figure B.

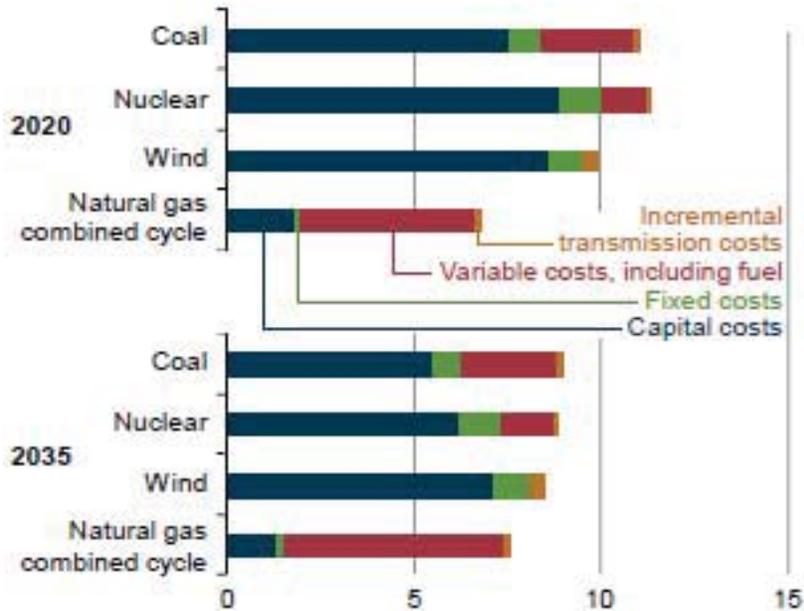
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<sup>1</sup> Annual Energy Outlook 1995, p. 30, Energy Information Administration, U.S. Department of Energy, January 1995, DOE/EIA-0383(95).

<sup>2</sup> These are projected costs for 2020 stated in 2009 dollars. Figure 81, p. 75, DOE/EIA-0383 (2011), April 2011.

Figure B.

**Figure 81. Levelized electricity costs for new power plants, 2020 and 2035 (2009 cents per kilowatthour)**



Source: Annual Energy Outlook 2011, Figure 81, p. 75, DOE/EIA-0383(2011)

## The Costs of Meeting Environmental Quality Regulations

One of the primary forces driving the shift from coal to natural gas as the preferred fuel for electric generation over the last decade, a shift towards what appears to be a significantly more costly fuel, has been the increasing costs of meeting ever more stringent pollution control costs on coal-fired generators and the uncertainty about future regulation of those coal plant emissions including the equivalent of a carbon tax. The Environmental Protection Agency, under pressure from the courts, has been increasing the pollution control requirements on older coal-fired plants that had been “grandfathered” in under the Clean Air Act and its amendments.

In addition, the requirements that haze producing emissions not impact National Parks and Wilderness areas have begun to be enforced. Coal-fired electric generators are often the primary source of the haze-producing emissions.<sup>3</sup> The power plant emissions most threatening to human health, including

<sup>3</sup> US EPA proposed a Regional Haze Rule in 2011 in response to court decisions ordering EPA to implement the provisions of the Clean Air Act (amended) that mandate “prevention on any future, and the remedying of any existing, impairment of visibility in the mandatory class I Federal areas which impairment results from manmade air pollution.” 42 U.S.C. 749(a)(1). Those mandatory Class I areas are primarily National Parks and Wilderness

mercury and other toxic metals as well as sulfur oxides and tiny particulates are the pollutants most closely linked with coal combustion. Those emissions are being subject to stricter limits. Also, most electric utility planners expect greenhouse gas emissions to ultimately be subject to limits and/or penalties or taxes, and since coal is the most carbon intensive of the electric plant fuels, such greenhouse gas controls are likely to be more costly for coal-fired plants. In addition, the solid and liquid waste byproducts associated with coal-combustion, which are quite toxic, are also coming under increasingly strict regulation. Finally, public opposition to siting new coal-fired electric plants and public support for the retirement of existing coal-fired plants has grown.

The result of this near perfect storm of concerns about the environmental costs associated with coal-fired electric generators has virtually eliminated coal as a fuel for new electric generators in the United States and has led to the “early” “voluntary” retirement of a significant number of existing coal-fired generators. This has tended to permanently reduce the demand for coal in the United States.

## **Dramatic Declines in the Relative Cost of Natural Gas**

The dramatic decline in the price of natural gas and the ongoing increases in the price of some U.S. coals, e.g. Central Appalachian coal, have certainly also pushed utilities toward a shift away from coal as a fuel for electric generation. The dramatic increase in the projected American supply of natural gas over the last decade has also provided some confidence that those natural gas prices will remain relatively low for some time into the future.

At any given time there is an existing set of electric generators that are powered by different energy sources. Renewable sources, such as hydroelectric, wind, and solar, have no fuel costs. Electric generators using fossil fuels, of course, have significant fuel costs that vary with the level of generation.

Because the demand for electricity varies considerably across the day and across the year, not all electric generators are operating at full capacity all or most of the time. In general, utilities first operate the generators with the lowest operating costs and as the demand for electricity increases, they turn to generators with higher operating costs. This “economic dispatch” of the generators that are cheapest to operate first and turning to the most expensive generators only during the periods of higher electric demand means that as relative fuel prices vary, the intensity of use of generators fired by coal and natural gas will vary too. As natural gas falls in price relative to coal, natural-gas-fired plants will be used more and coal-fired plants less. The same will happen if the cost of coal rises relative to natural gas.

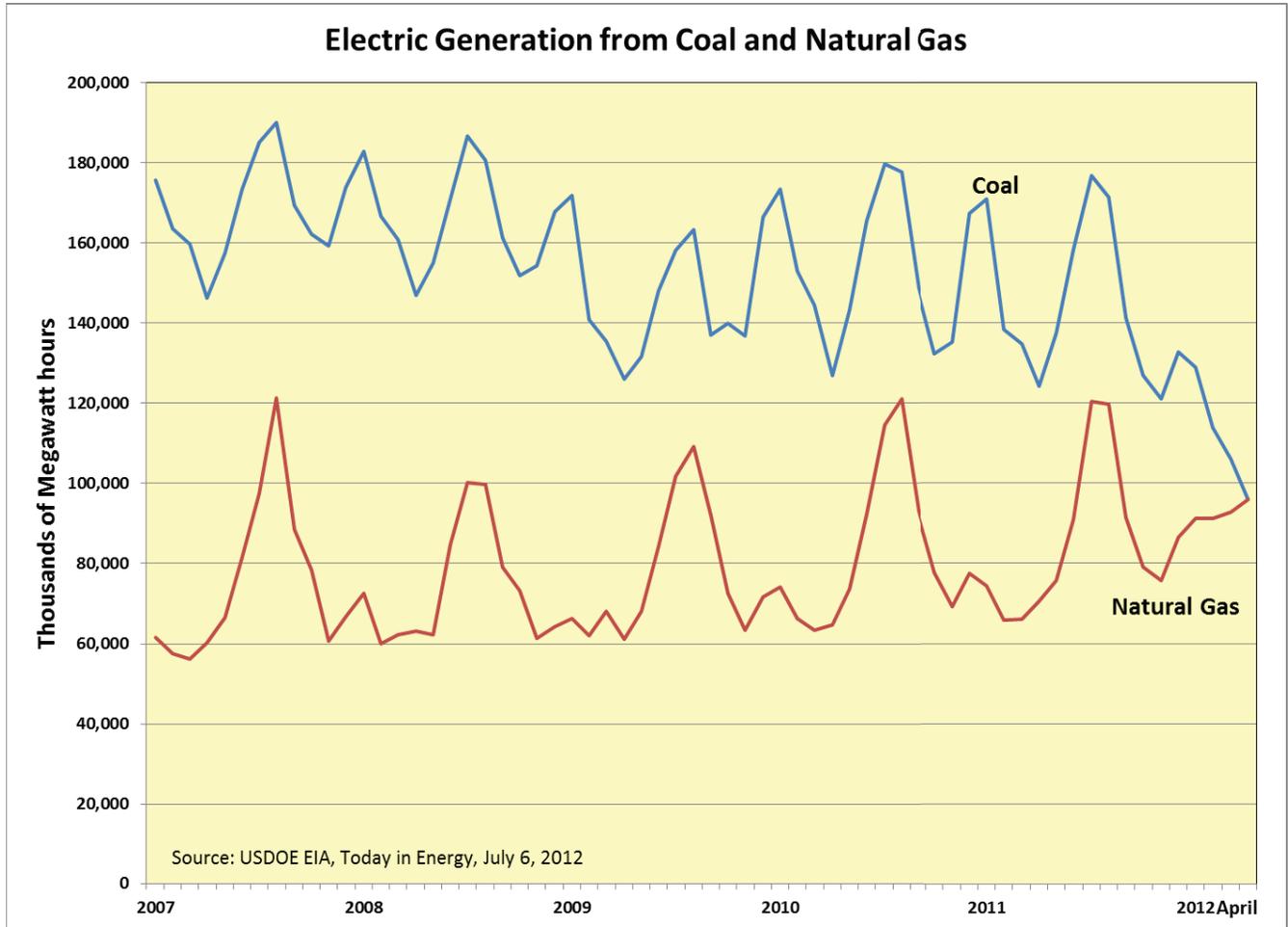
That is exactly what has been happening as natural gas prices to electric generating plants tumbled to a ten-year low in the first quarter of 2012. For the first time in 40 years of record keeping, the use of coal declined and the use of natural gas rose to a point where natural gas-fueled generation equaled coal-

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Areas. The haze-precursor pollutants include nitrogen oxides, sulfur dioxide, and particulate matter produced by coal-fired plants that also harm public health.

fired generation, each the source of about a third of the electricity being generated in the United States. For the 1990-2010 period coal typically had been the fuel for about half of the electricity generated in the U.S., while natural gas fueled less than 20 percent of generation. See Figure C. During the summer of 2012 coal's share of electric generation rose to 39 percent while the share of generation from natural gas rose only slightly. Projections are that by the end of 2012, coal consumption in the U.S. is expected to be at its lowest level since the mid-1990s.<sup>4</sup>

Figure C.



## Financial Difficulties of Arch Coal and Other U.S. Coal Companies

The decline in the demand for coal in the United States has led to considerable financial pressure on American coal mining companies. Patriot Coal, into which Peabody Energy spun off most of its eastern coal properties, filed for bankruptcy July 2012. Most other major mining companies have reduced their

<sup>4</sup> Value Line, September 7, 2012, Coal Industry, p. 593.

production, laying off workers to pare down costs. During 2012 the stock prices for most American coal companies also fell steeply. Arch Coal, the developer of the Otter Creek Tracts, saw its stock price fall to about \$5 a share in late July 2012, an all-time low. In mid-November it was trading for about \$6.40 about one-twelfth of its mid-2008 peak level. Arch is projected to suffer an overall loss for the year 2012. In September 2012 *Value Line* described Arch as an “attractive acquisition target.” Alpha Natural Resources, a coal mining company operating in both Appalachia and the PRB was similarly described as an “appealing buyout target.” In mid-November 2012, its stock was trading for about \$7 a share, down from \$65 at the beginning of 2011 and \$119 in the middle of 2008.<sup>5</sup>

In this severely depressed domestic U.S. coal market, it is unlikely that a large new PRB coal mine such as that proposed for Otter Creek represents can expect to sell its additional coal in the United States.

## **Changes in the Market for Montana PRB Coal between 1984 and 2012 as Seen by the U.S. Energy Information Administration (EIA)**

We have the ability to look back at how the U.S. Department of Energy’s Energy Information Administration (EIA) described the U.S. market and projected the growth in coal production in the Western (largely the PRB) coal fields back in 1984 when TRRR was seeking permits and now in 2012 when it was reapplying for that permit.<sup>6</sup> EIA has produced an Annual Energy Outlook (AEO) each year, a report on the status of energy use, including coal use, in the U.S. For consistency in our comparison, we review the “Coal Production by Region” figure that the EIA produces in almost all of the AEOs. This comparison allows us to see how the EIA expected Western coal production to grow over the following 20 years as of 1984, 1995, 1996, 2005, and 2012. This will give us a broad view of EIA’s projections of the role of PRB coal in the U.S. coal market as well as how EIA’s view of that market has changed over time.

In 1983 the PRB was producing about 225 million short tons of coal and was in a period of very rapid expansion. At that time the Western region had just reached about the same level of coal production as the eastern underground mines for the first time in history, and the Western region was predicted to produce about 430 million short tons of coal by 1995.<sup>7</sup> In 1984 the EIA forecasted an almost meteoric rise in the amount of coal that would be produced by the PRB as the Western region was predicted to almost double its coal production in a ten year period. This projection of incredible growth was based on the looming implementation of EPA regulations that favored the low-sulfur coal of the PRB compared

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<sup>5</sup> *Value Line*, September 7, 2012.

<sup>6</sup> In the earlier EIA domestic coal market projections, all coal sources in the West tended to be combined into an aggregate “Western” category. The PRB coal of Wyoming and Montana dominated this Western coal category. The Western category, however, did include coal produced in western Wyoming, Colorado, Utah, New Mexico, and Arizona. In that sense using “Western” coal as a proxy for PRB coal tends to exaggerate slightly the size of the PRB production.

<sup>7</sup> U.S. DOE Annual Energy Outlook 1984.

to the high-sulfur coals of the Illinois and Appalachian coal regions. The U.S. was recovering from the energy crisis of the early 1980s and EIA projected a decreasing use of oil for electrical generation in favor of coal that could be produced domestically as opposed to imported oil. Newly developed coal surface mining techniques were also expected to allow the very low-cost, low-sulfur, PRB coal to expand its share of the national market. In short the EIA was projecting that the PRB would step into the domestic U.S. market for electric generation in a major way.

By 1995 the EIA's 1984 projection of 430 million short tons being produced in 1995 from the Western region was more than realized as about 440 million short tons were produced. The PRB had undergone an unprecedented level of growth that matched the EIA's high growth predictions as the U.S. built and fueled coal-fired electrical generation to offset the loss of generation from foreign and domestic oil and domestic natural gas.<sup>8</sup> The Clean Air Act's 1990 amendments were also driving the continued growth of PRB coal production and the substitution of low-sulfur PRB coal for high-sulfur eastern coal.<sup>9</sup> Yet during this explosive growth period, Montana PRB coal was almost left completely out of that growth. While the PRB as a whole almost doubled production in a ten year period, Montana's annual coal production grew from 33 million short tons to only 39 million short tons. In fact, over the 1980 to 2000 period Montana's production of coal had been fairly static.<sup>10</sup>

In the 1996 AEO the EIA predicted that in 2010 the Western region would produce just over 500 million short tons of coal.<sup>11</sup> While the Wyoming portion of the PRB was projected to continue to expand, in 1996 Montana coal production had already reached what would become its 2012 level of coal production of about 40 million short tons.<sup>12</sup>

In 2005 the EIA was still making projections of rapid growth in PRB coal production. In 2003 the Western region produced about 550 million short tons of coal which was more than the 1995 AEO predicted would be produced there by 2010. The 2005 AEO predicted that by 2025 the west would produce some 900 million short tons of coal. To put this in context, the U.S. total amount of sub-bituminous and bituminous coal produced for 2010 was just over 1 billion short tons.<sup>13</sup> That is, the Western region was projected by the AEO 2005 to produce (by 2025) 90% of the total bituminous and sub-bituminous coal produced in 2010 in all of the U.S. This volume of coal would have been almost twice the coal that the PRB actually produced in 2010. In 2005 Montana coal production again was only a small fraction (9%) of total PRB coal production and continued its flat trajectory of coal production by producing 40 million short tons.<sup>14</sup>

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<sup>8</sup> IBID

<sup>9</sup> U.S. DOE Annual Energy Outlook 1996

<sup>10</sup> [http://leg.mt.gov/content/publications/Environmental/2002deq\\_energy\\_report/coal.pdf](http://leg.mt.gov/content/publications/Environmental/2002deq_energy_report/coal.pdf)

<sup>11</sup> IBID

<sup>12</sup> U.S. DOE Annual Coal Report 1996. Montana produced a little more than 38 million short tons of coal in 1996 which is very close to the 20 year average. In 2009, for example, Montana produced 39 million short tons of coal and in 2010 Montana produced 44 million short tons of coal.

<sup>13</sup> U.S. DOE Annual Coal Report 2010 Table 6

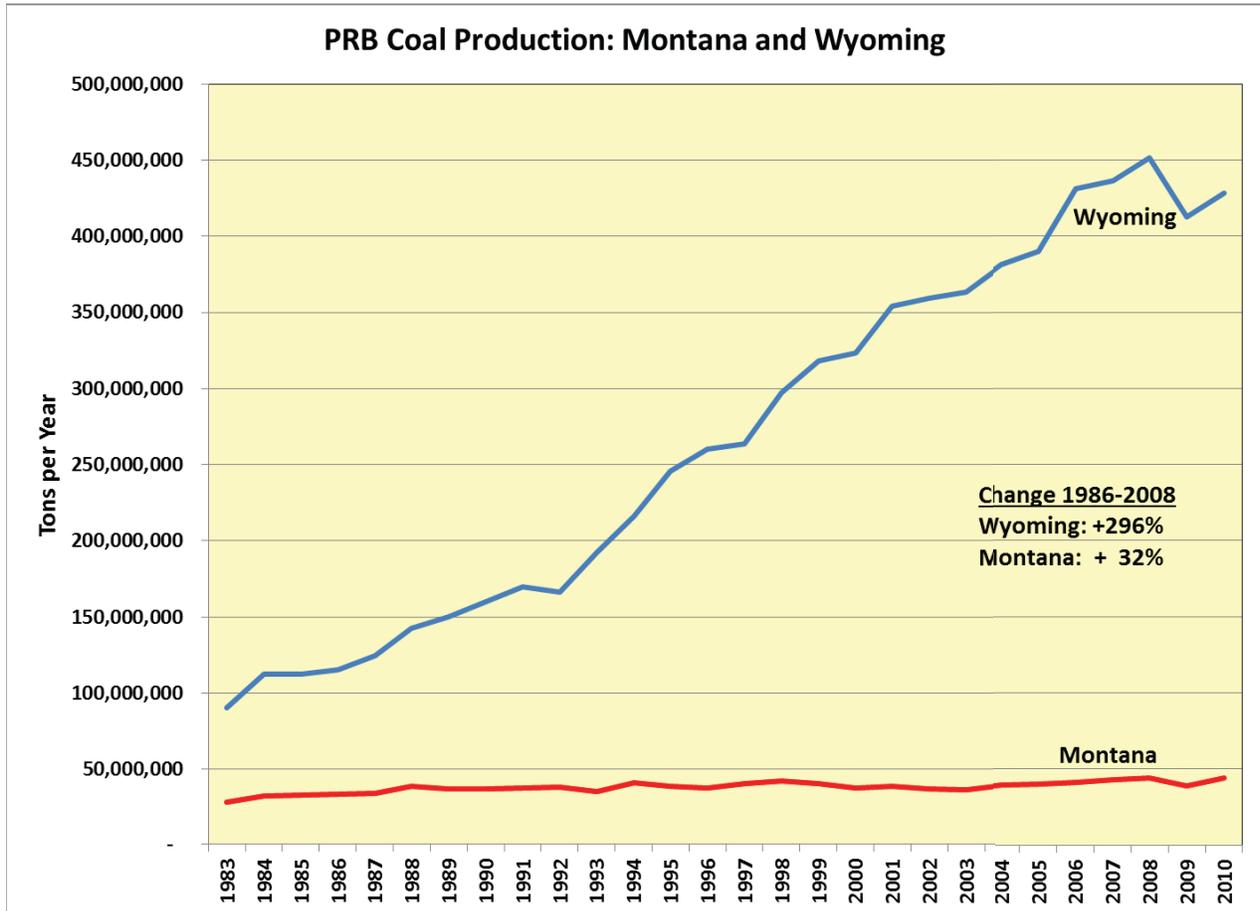
<sup>14</sup> U.S. DOE 2005 Annual Coal Report 2005 Table 6

In AEO 2012, facing the reality of the Great Recession and its aftermath of slow economic growth as well as very low natural gas prices, the shift toward natural gas fueled new generators and the retirement of older coal-fired generators, EIA coal projections painted a dramatically different picture of present and future U.S. coal markets and the role of PRB coal in them. In 2010 the Wyoming PRB actually produced 468 million short tons of coal and Montana produced 44 million short tons.<sup>15</sup> The AEO 2012 dramatically scaled back its projection of Western coal production in 2025 from 900 million short tons predicted in AEO 2005, to about 695 short tons. Although the Western region was predicted to continue to take over a somewhat larger portion of total coal consumed in the U.S., the general trend was for declining coal consumption in the U.S. in the short term followed by much slower growth than EIA had previously predicted. In the mid-1980s there were great expectations for Western (PRB) coal to expand to dominate other American coal fields, and indeed those expectations were fulfilled. That however was a tale of two PRBs. While the Wyoming portion of the PRB saw meteoric growth, the Montana portion of the PRB saw almost no growth at all after 1988. After the TRRR was approved in 1986, Wyoming PRB production expanded almost 10 times faster than Montana PRB production. See Figure D below. That exuberance about the future market for PRB coal was present when the Tongue River Railroad was initially proposed and approved in the first half of the 1980s. The fact that the TRRR was *not* built and the coal it was intended to carry did *not* get mined was an indication of the limited market to which the Montana PRB coal actually had access.

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<sup>15</sup> U.S. DOE Annual Coal Report 2010 Table 6

Figure D.



The divergent growth trends in Wyoming and Montana coal production are largely explained by the fact that Montana PRB coal cannot directly compete with much of the Wyoming PRB coal because of a significant transportation disadvantage (that will be discussed more below). This is not an abstract economic argument. Montana simply has not been able to expand its presence in the U.S. on the scale Wyoming has. The idea of meteoric growth that prevailed in the mid-1980s certainly did not come to fruition for Montana. In fact, as the rest of the PRB continued to grow and take an ever larger portion of the nation's electrical generating needs, the Montana portion of the PRB remained stagnant and decreased in percentage terms with respect to coal consumption in the U.S. as a whole. To understand why the Montana portion of the PRB has not experienced the growth of its neighbor to the south, it is important to understand where PRB coal actually gets sold and why.

## The Limited and Shrinking Market for Montana PRB Coal

Of the 468 million short tons of coal that were produced by the PRB in 2010, about 330 million short tons were delivered to the West North Central and East North Central census divisions that we will collectively call the “North Central” region (e.g. the Upper Midwest).<sup>16</sup> In other words, the vast majority of coal that is produced by the PRB is consumed by the North Central region. Because the Montana PRB coal lies several hundred miles north of the bulk of Wyoming’s PRB coal fields and also several hundred miles north of much of the most densely settled North Central region, it suffers from of a transportation disadvantage relative to the Wyoming PRB. In addition Montana coal tends to have higher sodium content which raises boiler and pollution control maintenance costs. For both of these reasons Montana coal has historically only been able to compete for less than one tenth of North Central market. Because Montana coal is hampered by its high sodium content and a very small geographic area where it has a transportation advantage over Wyoming coal, the prospects for Montana coal to expand production and sell its coal to the east or south has been limited and the actual realized coal sales quantity from Montana confirms this limited market. The fact that the TRRR did not get built after it was permitted in 1986 and Tongue River coal was not developed is additional evidence of the limited market the Montana’s PRB coal faced.

Of the 330 million short tons of PRB coal delivered to the North Central region in 2010, the Montana PRB contributed about 22 million short tons. This represented about 60% of the coal that Montana sold domestically.<sup>17</sup> Montana kept about 11 million short tons for coal-fired generation within the state and shipped 3.3 million short tons to the west (Washington, Oregon, and Arizona). These three destinations represented about 99% of the coal that Montana sold into American markets.<sup>18</sup> The point of this accounting is to show that Montana ships the majority of its coal to the North Central region. This has been true since at least 2001 when the EIA began publishing the Annual Coal Distribution reports showing coal flows from state to state. In 2001 Montana sold 83% of its coal to the North Central region and in 2008 Montana sold about 54% of their coal to the North Central region.<sup>19</sup>

Any new Montana PRB coal that is produced will be competing for the same market that Montana coal has had access to for the last 30 years. Wyoming will continue to dominate the sale of coal to the North Central region because of the transportation cost advantage it has in accessing the major coal markets there. Any new mines in Montana will be forced to either displace current Montana mines or look for new markets in which to sell their coal. In addition Montana coal faces the problem that the geographic area that has been Montana’s dominant coal market, a larger share of which Montana would like to

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<sup>16</sup> Annual Coal Distribution Report 2010 by the EIA. The West North Central census division is made up of ND, SD, MN, IA, NE MO, and KS. The East North Central census division is made up of WI, IL, IN, OH, and MI.

<sup>17</sup> IBID.

<sup>18</sup> Montana produced a total of 44.7 million short tons of coal in 2010 according to the EIA’s Annual Coal Report for 2010. 4.4 million short tons of that coal was produced at underground mines and is not included as PRB coal. Montana exported about 8 million short tons of coal in 2010 and about 3.6 million short tons of that coal would be considered PRB coal.

<sup>19</sup> <http://www.eia.gov/coal/distribution/annual/> (see 2001, 2005, and 2011)

capture, is predicted to use less coal in the future. The traditional market for Montana's PRB coal is projected to shrink.

Because of the ongoing retirement of older coal-fired electrical power plants, the lingering effects of the Great Recession, and the decline in the price of natural gas, less coal is being burned in the places to which Montana historically sent its coal. The North Central region is predicted by the EIA and Peabody Energy to use less PRB coal in the near term and not return to the 2010 levels of PRB coal consumption until 2032.<sup>20</sup> This leaves Montana coal attempting to take over a larger portion of a shrinking market in which PRB coal historically has been unable to gain a major foothold. But the North Central region is not the only shrinking market into which Montana sells its coal.

Oregon and Washington, states that have both been small customers for Montana coal, are scheduled to retire their Boardman and Centralia coal fired-power plants by 2020 and 2025, respectively.<sup>21</sup> As part of Oregon and Washington's continued strategy to rely less on fossil fuels, both states have agreed to retire their only coal-fired generators. The state of Montana itself, which keeps about 25% of Montana coal production for in-state use, is also planning to retire one of its coal-fired facilities. The Corette facility outside of Billings will be shut down in 2015 because of weak regional electric markets and the cost of installing new pollution control devices.<sup>22</sup>

In short, Montana coal is facing stagnant or declining domestic American markets for its coal. This of course raises the question of where companies that own or have leased Montana coal, especially those planning new mines, are hoping to sell their coal, if it is not into the domestic American markets?

## **The Market for Otter Creek Coal Identified in the 2006 and 2009 Otter Creek Appraisals Done for the State of Montana**

The limited eastern market for Otter Creek coal was also identified in two analyses carried out for the owners of the Otter Creek coal, the State of Montana (Department of Natural Resources) and Great Northern Properties in 2006 and 2009. Those studies sought to appraise the value of the Otter Creek tracts for coal production so the owners could evaluate lease offers including bonus bids.

Between 2001 and 2007, 90 to 95 percent of Montana coal sales have gone to nine states: Montana, North Dakota, Minnesota, Wisconsin, Michigan, Illinois, Indiana, Washington, and Oregon. Geography largely dictates the concentration of sales in these states. They are the states where Montana has a

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<sup>20</sup> U.S. DOE Annual Energy Outlook 2010 and

[http://www.peabodyenergy.com/mm/files/Investors/IR%20Presentations/AugustInvestorRoadshow\\_Final.pdf](http://www.peabodyenergy.com/mm/files/Investors/IR%20Presentations/AugustInvestorRoadshow_Final.pdf)

<sup>21</sup> <http://www.nwcouncil.org/news/2011/06/2.pdf>

<sup>22</sup> <http://www.chem.info/News/FeedsAP/2012/09/topics-alternative-energy-ppl-montana-to-mothball-coal-fired-plant-in-2015/>

transportation cost advantage relative to Wyoming coal. Often that transportation cost advantage is small and both Montana and Wyoming coal is sold into the same markets.<sup>23</sup>

Since 2001 both Montana and Wyoming have seen similar percentage increases in sales to these states, about 10 to 15 percent. That, however, masks some changes in competitive advantage. Montana, for instance, has lost all sales to Illinois where Wyoming sales have increased 78 percent. In Michigan and Indiana, Montana sales have been relatively static or declining while Wyoming sales have increased 69 percent and 40 percent, respectively. On the other hand, Montana sales to North Dakota and Minnesota have expanded while Wyoming sales have contracted. Montana sales to Washington have also increased while Wyoming has just begun to compete there. In Oregon, Wyoming sales have been steady but Montana's sales have fallen to zero. Meanwhile Wyoming has not been able to gain market share in Montana just as Montana has not been able to sell into Wyoming markets.

Looking at the ebb and flow of sales over this last decade, it is clear that it is in the northern states closest to Montana where Montana's market has expanded. The farther south the location, the more inroads Wyoming has made because of its transportation cost advantage. It is the distance by rail to the various electric generators that tends to dictate the markets to which Montana has access.

Otter Creek coal has relatively high sodium content. High-sodium levels in coal cause "slagging" in boilers and can interfere with air-pollution-control devices. Because of this, as the Norwest appraisal states, "Coals with high sodium content **share a limited market** due to slagging problems they cause in certain types of power plant boilers. **This limits the market for high sodium coals to a small number of mid-western electric generating plants and some industrial plants.**"<sup>24</sup> (Emphasis added)

In the 2006 analysis, Norwest was more explicit about exactly where that "small number of Mid-western generating plants" that represented the "limited market" available for Otter Creek coal were located.<sup>25</sup> In a section in that report labeled "Marketing," Norwest points out that Otter Creek coal ash ranges from 5.8 to 8.8 percent sodium, a high level compared to other coals in the western U.S. In the southern Powder River Basin of Wyoming, the sodium averages 1.2 percent while coals in Colorado average about 2.5 percent sodium. Norwest also points out that "most plants avoid burning high sodium coals. Exceptions include the following ten plants which are within the competitive area for Otter Creek currently accepting higher sodium coals."<sup>26</sup> Norwest then proceeds to list the 10 plants: 5 in Minnesota, 4 in Michigan and 1 in Wisconsin. Those electric-generating plants that Norwest says "would likely constitute the initial target market for Otter Creek coals" are shown in Figure E below, which was taken from that 2006 Norwest report.<sup>27</sup>

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<sup>23</sup> Domestic Distribution of U.S. Coal by Destination State, Consumer, Origin and Method of Transportation, 2007, Energy Information Administration, December 2008.

<sup>24</sup> P. 2-4. This warning about "limited markets" for Otter Creek coal is repeated elsewhere in the 2009 Norwest appraisal (pp. 2-3 and 2-5).

<sup>25</sup> Otter Creek Property Summary Report, Volume I of II, submitted to Great Northern Properties and Montana Department of Natural Resources and Conservation, July 12, 2006.

<sup>26</sup> Ibid. p. 4-1.

<sup>27</sup> Ibid. p. 4-1 and Figure 4.1.

**Figure E**  
**Electric Generation Plants That Would Likely Constitute the**  
**Initial Target Market for Otter Creek Coals**



**Figure 4.1 from Norwest Corporation's "Otter Creek Property Summary Report," Vol. 1, July 12, 2006**

Note that transportation costs generally limit the area where Montana has a transportation-cost advantage over Wyoming. These areas include a northern tier of states: North Dakota, Minnesota, Wisconsin, Michigan, and Illinois to the east and Washington and Oregon to the west.

The ten electric generators identified by Norwest as the "initial target market for Otter Creek coals" have a total consumption of about 20 million tons of coal per year, only 57 percent of the annual production level that Norwest envisions from the Otter Creek Tracts. In fact, Norwest expressed concern that between 2004 and 2005 this market had "decreased to 16.1 million tons. The difference in consumption rates appears to be due to the intrusion of coal from the Southern PRB [Wyoming Powder River Basin]." <sup>28</sup>

<sup>28</sup> Ibid.

Of course, all of these electric generators are currently served by other coal suppliers. Even if Otter Creek was able to displace 100 percent of the current coal suppliers, more than 40 percent of the Otter Creek coal would have to be sold to plants other than those identified by Norwest in its 2006 report as the “initial target market.” Norwest recognizes this, commenting that “The volume of coal shipped from Montana to the high sodium-accepting power plants is only about 20 million tpy [tons per year]. **Careful effort developing a solid market strategy will be necessary to determine how best to nudge into this market without destroying whatever price discipline, if any, currently exists.**”<sup>29</sup> (Emphasis added)

Note that Otter Creek coal would have to both “nudge” its way into this already served market, displacing the current coal producers, as well as fending off competition from Wyoming coal producers. Also note that in doing so, both Otter Creek coal and further inroads into this market from Wyoming coal are likely to drive the price of the high-sodium coal downward as Otter Creek and Wyoming mines compete to take as much of that market away from current suppliers as possible.

In the 2006 Report Norwest also identified another group of 14 generating plants with an annual consumption level of about 30 million tons of coal that might serve as a market for Otter Creek coal. These were plants “also served by Montana mines neighboring Otter Creek, including Rosebud, Absaloka, Decker, and Spring Creek.” The four Colstrip power plants in Montana were included in this additional potential market for Otter Creek coal.<sup>30</sup> This statement underlines who the current coal suppliers are that Otter Creek would have to displace: They are almost exclusively Montana coal suppliers. Only one of the initial ten generation plants and none of the second group of 14 plants were served by a non-Montana mine. The market Norwest expects to support the Otter Creek mine will first have to be taken from other Montana coal mines, ton for ton. As described by Norwest, this is a zero-sum game for Montana: Otter Creek coal can be sold only at the expense of other Montana coal producers.

In the evaluation and appraisal of the Otter Creek coal tracts prepared for the State of Montana by Norwest to support Montana’s Otter Creek leasing process, Norwest came to the following conclusions:

- i. The high-sodium character of the Otter Creek coal limits the market into which it can be sold.
- ii. The market for Otter Creek coal is “a small number of mid-western electric generating plants.”
- iii. Almost all of those Mid-western electric-generating plants are currently served by other Montana coal mines.
- iv. Otter Creek coal will have to compete with and displace other Montana coal mines to gain a share of that limited market.
- v. That competition will put downward pressure on the price for coal that all Montana mines will face as they compete for market share in this limited market.
- vi. Wyoming appears to be making inroads into the geographic area where transportation costs previously created a protected market for Montana coal.

When these conclusions from 2006 and 2009 are put in the contemporary, 2012, context of declining national demand for coal, the market potential in the states to the east of Montana appear even

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<sup>29</sup> Ibid. p. 4-4.

<sup>30</sup> Ibid. p. 4-4, and Table 4.1.

bleaker. They certainly do not appear to support a very large new coal mine that is economically constrained by both its location and the quality of its coal.

## **The New Markets for Montana PRB Coal Envisioned by PRB Coal Companies: Exports to Asia**

Montana has over 25% of the estimated recoverable coal reserves in the U.S. which, in turn, holds the largest coal reserves in the world.<sup>31</sup> But Montana's share of total PRB coal production is not expanding and the markets to which the PRB has traditionally sold its coal are shrinking.<sup>32</sup> Even during the rapid expansion of PRB coal sales to the nation, Montana's contribution remained static at about 40 million tons per year. Now PRB sales are forecast to decline before returning to a much slower growth rate. That raises the question of to where Montana coal companies that wish to expand production are really looking for additional sales?

The largest coal companies in the world, which own the largest coal tracts in the PRB, have been focusing on sending their coal to Asia due to the flagging U.S. market and a seemingly ever-expanding Asian market. Driven by a large perceived market for PRB coal in Asia, there are multiple new west coast coal ports in the permitting process, regular announcements of potential port expansions on the same coast, and the two largest coal ports on the west coast of North America (Westshore and Ridley on the Canadian coast) are in the midst of upgrading their facilities to try and accommodate this expanding export market. Ports across the U.S. from the Gulf of Mexico to Virginia have seen their coal export volumes increase as coal companies scramble to maintain sales and profits in the face of declining U.S. markets by selling to the expanding Asian markets as well as displacing other suppliers in Europe. In 2011 the U.S. almost set a record for the largest volume of coal exported and is on track to break the 1981 U.S. record in 2012.<sup>33</sup>

Recent slowdowns due to environmental regulation, port infrastructure problems, and flooding have curbed the development and export of Australian, Indonesian, and Russian coal. Suddenly the world seemed hungry for coal even as U.S. consumption has slowed. All of this leaves the owners of the PRB coal, one of the world's largest and cheapest sources of coal, anxious to export its coal to make up for the lack of domestic demand and the increase in world export demand.

Peabody coal is faced with the reality that their market for 2012 appears to have decreased by 100-120 million short tons. Peabody's shipments of coal worldwide, in the second quarter of 2012, declined 104 million short tons versus the second quarter of 2011. More than offsetting this decline, Peabody

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<sup>31</sup> <http://www.eia.gov/beta/state/?sid=MT#tabs-3>

<sup>32</sup> [http://leg.mt.gov/content/publications/Environmental/2002deq\\_energy\\_report/coal.pdf](http://leg.mt.gov/content/publications/Environmental/2002deq_energy_report/coal.pdf)

<sup>33</sup> <http://www.eia.gov/todayinenergy/detail.cfm?id=8490>

expects their exports from the U.S. to grow by 150-170 million short tons by 2017.<sup>34</sup> Peabody is betting it can wholly replace the declines in their sales within the U.S. and actually expand their coal production by offsetting U.S. domestic losses with the expansion of exports to Asia. Peabody is a major investor in the Gateway Pacific Terminal proposed in the state of Washington near Bellingham and has also secured long term agreements to export 5-7 million tons of coal per year through the Gulf Coast between 2014 and 2020. Peabody is specifically targeting Asia as they predict 450-550 million more short tons of coal will be exported there by 2016.<sup>35</sup> Peabody as well as many other large PRB coal companies are attempting to export their coal through any port that has excess capacity. Because that port capacity is simply not large enough, they are also actively attempting to build new export facilities.

Arch Coal, the current lease holder of the Otter Creek tracts and partner in the Tongue River Railroad, is also specifically focusing on exports as they make abundantly clear in their 2011 Annual Report.

Arch focused on becoming more global during 2011. With much of coal's growth occurring outside U.S. borders, we laid the foundation for future international growth by adding significant export capacity to further unlock the value of our metallurgical and thermal coal assets. Specifically, we invested in a proposed export facility in the state of Washington to complement our equity investment in the DTA export terminal in Virginia. We also locked up dedicated throughput space at ports along the Gulf of Mexico, the Eastern Seaboard and the western Canadian coast. Supporting these investments, we established new offices in Singapore and London to expand our customer relationships and increase our global breadth and depth.<sup>36</sup>

As is clearly shown in Arch's comments above, it is a by any means, through any port, a full court press to ship more of their coal out of the U.S. Unlike Peabody that has diversified its coal fields so that it now reports half of its business profits overseas, Arch is much more American-centric. Although Arch talks of their international offices in Singapore and London, almost all of their coal plays currently are in the U.S. They are betting their future on their ability to export U.S. coal to the rest of the world. Nowhere is this more evident than in their leasing of Montana coal at Otter Creek, their investment in the Tongue River Railroad, and their investment in the Longview, WA, proposed coal port.

In January 2011, the Company purchased a 38% ownership interest in Millennium Bulk Terminals-Longview, LLC ("Millennium"), the owner of a brownfield bulk commodity terminal on the Columbia River near Longview, Washington, for \$25.0 million, plus additional future consideration upon the completion of certain project milestones. Millennium continues to work on obtaining the required approvals and necessary permits to complete dredging and other upgrades to enable coal, alumina and cementitious material shipments through the terminal. The Company will control 38% of the terminal's throughput and storage capacity, in order to facilitate export shipments of coal off the west coast of the United States.<sup>37</sup>

The reason that Arch, as well as all of the major players in the PRB, are looking to export their coal is that the domestic market is at best stalled and at worst in permanent decline. A feverish pursuit of U.S.

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<sup>34</sup> [http://www.peabodyenergy.com/mm/files/Investors/IR%20Presentations/AugustInvestorRoadshow\\_Final.pdf](http://www.peabodyenergy.com/mm/files/Investors/IR%20Presentations/AugustInvestorRoadshow_Final.pdf)

<sup>35</sup> Ibid.

<sup>36</sup> [http://thomson.mobular.net/thomson/7/3271/4578/document\\_0/ArchAR11\\_FinalWebView.pdf](http://thomson.mobular.net/thomson/7/3271/4578/document_0/ArchAR11_FinalWebView.pdf) page 12.

<sup>37</sup> [http://thomson.mobular.net/thomson/7/3271/4578/document\\_0/ArchAR11\\_FinalWebView.pdf](http://thomson.mobular.net/thomson/7/3271/4578/document_0/ArchAR11_FinalWebView.pdf)

export capacity has ensued as the major coal producers in the U.S. try to figure out how they can obtain a share of the international market. Montana coal has a transportation cost advantage with respect to Wyoming if that Montana coal can be shipped to Asia out of a northwestern American Pacific port. The coal companies have decided that if Montana coal is going to expand, it is going to expand into the international seaborne market. That is the reason that Cloud Peak, who owns, among other coal resources, the Spring Creek Mine in Montana and exported 4.7 million short tons of coal to Asia in 2011, is one of the few PRB producers to secure part of the very limited current port capacity at the Westshore export facility on the Canadian west coast. Cloud Peak's 2011 Annual Corporate Report talks more specifically about their exports and the transportation advantage that Montana has to the west coast of the U.S. for export.

These exports generally came from the Spring Creek Mine in the northern PRB of southeast Montana. This mine has higher energy coal than mines in the southern PRB and is approximately 200 miles closer to the terminals, giving it a quality and rail freight advantage over southern PRB mines. Demand for our coal from Asian utilities remains strong, but sales continue to be limited by West Coast export terminal capacity. We are working with several different groups trying to develop terminal projects and are hopeful that additional capacity will become available in the next few years. Increased export capacity and favorable market conditions would position us well to significantly increase exports, which would create new jobs and tax revenues in Montana and Wyoming.<sup>38</sup>

Together Peabody, Arch, and Cloud Peak have made their hopes for Montana and Wyoming PRB coal abundantly clear. They are moving to export their coal to Asia. This current drive to export Montana coal to Asia stands in stark contrast to the market for Montana coal in the mid-1980s. In the mid-1980s the coal companies saw incredible growth potential for Montana coal in the markets of the American upper Midwest. When that potential was not realized they abandoned their hopes for coal deposits in the Tongue River Valley that were isolated from existing transportation infrastructure and thus required the additional cost of extending railroads to those coal fields. Clearly Arch coal is not counting on U.S. domestic coal markets to the east which did not support development of Tongue River Valley coal even when the demand for Powder River Basin coal was booming in the 1984-2008 period. The markets driving the current interest in the Otter Creek coal and the TRRR are not domestic U.S. markets to the east but foreign export markets to the west. The economic rationale for the TRRR has fundamentally changed.

## Conclusions

PRB coal burst onto the American electrical generating stage thanks to EPA air emissions regulations and very low coal production costs. The mid-1980s saw a period of explosive growth in coal production in the Wyoming PRB while Montana PRB coal production lingered in the 40 to 45 million tons per year range between 1987 and 2010. Today the PRB sends most of its coal to the North Central region of the U.S. In EIA's 2012 projections, the North Central region of the U.S. is predicted to use less coal in the near future than it currently does and is predicted not to return to 2010 levels of consumption until 2032. Montana coal currently provides a little less than 7% of the total American coal used for electricity generation in the North Central region largely because of transportation disadvantages

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<sup>38</sup> <http://www.cloudpeakenergy.com/investor-relations/annual-reports>

relative to Wyoming. Montana coal that is being burned for electrical generation in Oregon's and Washington's only coal-fired plants and one of Montana's electric generators will also soon come to a halt as the Boardman, Centralia, and Corette power plants are scheduled to all be retired before 2025. Montana has consistently been a small minority supplier of PRB coal to the U.S coal market as a whole even though it has larger reserves than the Wyoming PRB. However, Montana coal has a transportation advantage in reaching the west coast of the U.S. and Canada. As a result, major American coal companies have indicated their intention of refocusing their attention on exporting PRB coal to Asia. Because of this transportation advantage, Arch Coal, Cloud Peak, and Signal Peak are all focused on ways to export their coal, and specifically their Montana coal, to growing Asian markets.

The coal that could come from the Otter Creek tracts on the Tongue River Railroad is not focused on going east to the American Midwest coal markets. The economics of this fact are clear for the 1986 through 2008 period since the Tongue River Railroad was not built when it was first permitted and the Tongue River coal fields were not developed. The explosive growth of the Montana portion of the PRB that the coal companies had hoped for never came to fruition. Now we have another period of interest to develop the Tongue River coal fields and the TRRR to serve them, but this time the focus is decidedly on the export of Montana coal to Asia through new and expanded west coast coal ports and upgraded railroad infrastructure to facilitate the movement of large quantities of Montana and Wyoming coal to the west coast. The 2012 market for Montana coal is wholly different from what it was in the mid-1980s.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 30186,  
TONGUE RIVER RAILROAD COMPANY, INC.  
- RAIL CONSTRUCTION AND OPERATION -  
IN CUSTER, POWDER RIVER AND ROSEBUD COUNTIES, MT**

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**VERIFIED STATEMENT  
OF  
GERALD W. FAUTH III**

My name is Gerald W. Fauth III. I am President of G. W. Fauth & Associates, Inc., an economic consulting firm with offices at 116 South Royal Street, Alexandria, Virginia 22314. I have over 30 years experience working on railroad regulatory issues. The vast majority of my experience has involved issues before or directly related to the U.S. Surface Transportation Board (STB) and its predecessor, the Interstate Commerce Commission (ICC). My experience includes serving 3½ years at the STB as a staff advisor and Chief of Staff for a STB Board Member. A statement describing my background, experience and qualifications is attached hereto as Appendix GWF-1.

Tongue River Railroad Company, Inc. (TRRC) is a subsidiary of BNSF Railway Company (BNSF) (which is a subsidiary of Berkshire Hathaway), and Arch Coal, Inc. (ARCH).<sup>1</sup>

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<sup>1</sup> According to TRRC's Revised Application dated October 16, 2012 (page 6) and Supplemental Application dated December 17, 2012 (page 11), TRRC is owned by Tongue River Holding Company, LLC (TRR Holding), which is owned by BNSF (34.68%) and ARCH (34.68%). In a previous STB filing dated August 29, 2011, however, TRRC indicated that BNSF and ARCH each hold a "33 1/3% membership interest." BNSF's 2011 Annual R-1 Report to the STB also states that BNSF controls 33.33% of TRR Holding (Sch. 310, L. 23). TRR Financing, LLC ("TRR Financing"), a company controlled by Mr. Forrest E. Mars, Jr., also holds a 33.33% membership interest.

In response to an STB decision served June 18, 2012 which reopened this proceeding, TRRC filed a “*Revised Application*” in STB FD 30186, Tongue River Railroad Company, Inc. - Rail Construction and Operation—In Custer, Powder River and Rosebud Counties, Montana, which represented a renewed proposal to construct and operate a new rail line to access Powder River Basin (PRB) coal mines in the Ashland, Montana area. The proposed railroad construction project is estimated to cost \$416 million.<sup>2</sup> BNSF would serve as the operator of the proposed TRRC line.

In its Revised Application, TRRC proposes to build, with certain refinements, approximately 83 miles of the line that was first approved and authorized by the ICC in 1986. TRRC stated that, “Most of the Refinements proposed in the Revised Application were already considered by the Board.”<sup>3</sup> TRRC also indicated that it did not intend to build previously proposed and approved lines south of Ashland to Decker, Montana. Despite the fact that the line had been previously approved by the ICC, had been scaled back and involved previously considered refinements, the STB reopened the proceeding and decided to conduct a new environmental review based on TRRC’s modified plans.

In response to a subsequent STB decision dated November 1, 2012 which requested additional information, TRRC filed a “*Supplemental Application*” on December 17, 2012. Rather than merely supplementing the record and amending the Revised Application, however, TRRC submitted a totally new and revised application and proposed a major change in the configuration and alignment of the proposed TRRC rail line.

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<sup>2</sup> TRRC Supplemental Application dated December 17, 2012, page 17.

<sup>3</sup> TRRC Revised Application dated October 16, 2012, page 1.

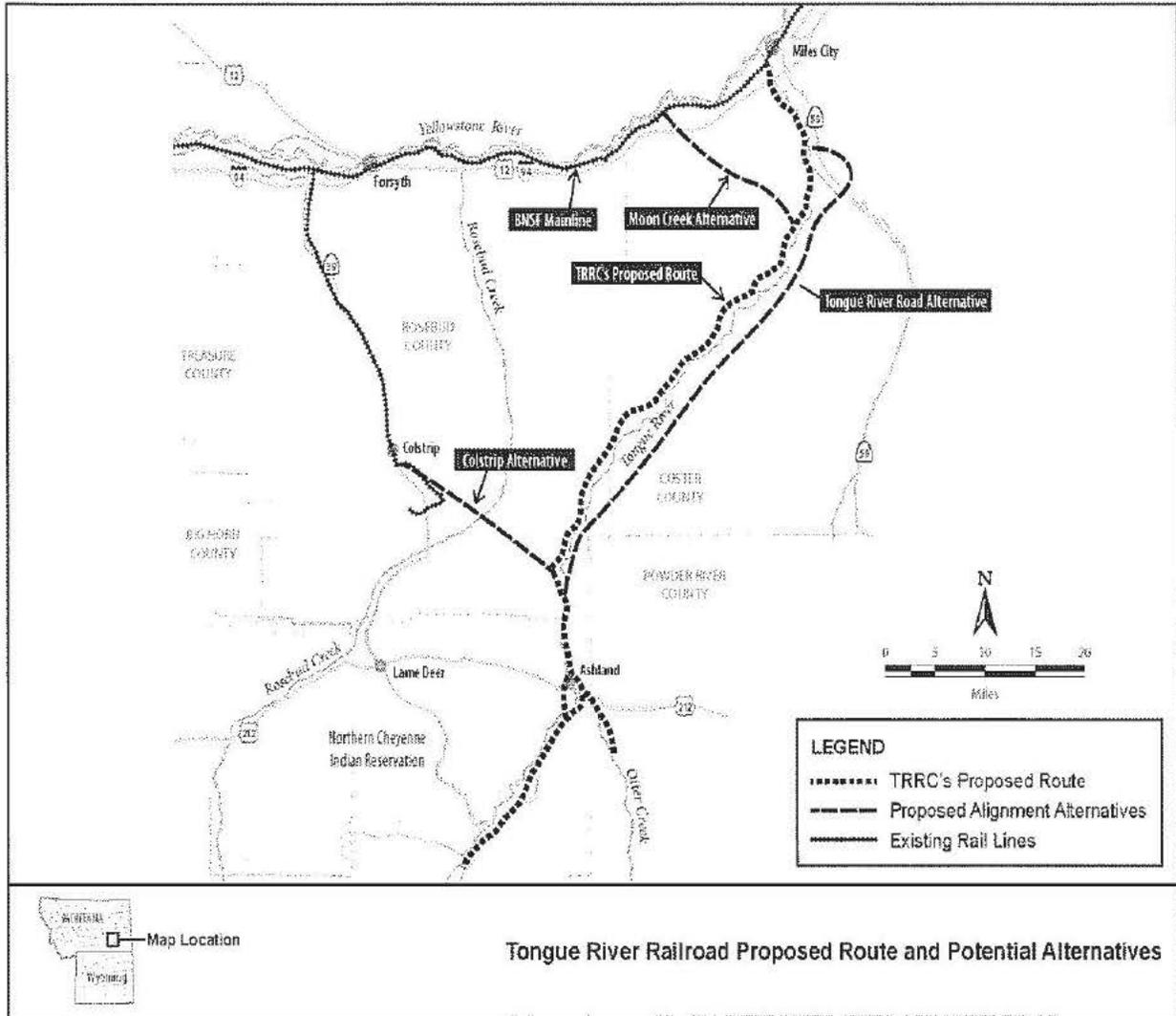
I have been asked by the Northern Plains Resource Council (NPRC) to review TRRC's Revised and Supplemental Applications and comment on the STB's proposed Draft Scope of Study. Under 49 U.S.C. 10901(c), the STB must approve a proposal to construct or operate a rail line unless the STB finds that such activities are inconsistent with the "public convenience and necessity." 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 its "Supplemental Application."

In its Supplemental Application, TRRC changed the previously preferred and ICC-approved route, which had remained basically unchanged since 1986, involved approximately 83 miles and connected with BNSF's main line at Miles City. TRRC now proposes a new route called the "*Colstrip Alignment*," (or Colstrip Alternative) which would involve the construction of approximately 42 miles and would connect with an existing BNSF coal line near Colstrip Montana. TRRC maintains that the Colstrip Alignment "offers the shortest, most cost-effective and least environmentally impactful routing for the proposed line."<sup>4</sup> The following map shows the TRRC proposed and potential alternative routes:

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<sup>4</sup> Supplemental Application, dated December 17, 2012, page 2.

**TRRC Proposed and Potential Alternative Routes**



The following table shows the mileage differences between the previously ICC-approved route in TRRC I (and the preferred route in TRRC’s Revised Application) and TRRC’s new preferred Colstrip Alternative route set forth in TRRC’s Supplemental Application:

**Table 1**

**Comparison of TRRC Proposed Route Miles**

TRRC Line Segment	Miles
<b>ICC-Approved TRRC I</b>	
Miles City to Common Point (Tongue River Crossing)	60.8
Common Point to Ashland Bifurcation Point	9.1
Ashland Bifurcation Point to Terminus Point 1 (Montco Mine)	7.6
Ashland Bifurcation Point to Terminus Point 2 (Otter Creek Mine)	<u>5.7</u>
<b>Total Approved Miles</b>	<b>83.2</b>
<b>TRRC's Proposed New Colstrip Alternative Line (TRRC IV)</b>	
Colstrip to Common Point (Tongue River Crossing)	19.8
Common Point to Ashland Bifurcation Point	9.1
Ashland Bifurcation Point to Terminus Point 1 (Montco Mine)	7.6
Ashland Bifurcation Point to Terminus Point 2 (Otter Creek Mine)	<u>5.7</u>
<b>Total Proposed Miles</b>	<b>42.2</b>
<b>Total Miles Previously Approved by ICC in TRRC I</b>	<b>22.4</b>

As can be seen, although the Colstrip Alternative is shorter than the TRRC I route (42.2 versus 83.2 miles), only 22.4 miles of the proposed Colstrip Alternative miles were approved by the ICC under TRRC I.<sup>5</sup> Despite the fact that there may be certain benefits associated with the proposed Colstrip Alignment, TRRC's recent and sudden switch from the long-time (1986) and previously ICC-approved route via Miles City to the Colstrip Alignment (which was rejected by the ICC in 1986) represents a major and significant change. Only 53% (22.4/42.2 miles) of the proposed Colstrip route has been approved by the STB.

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<sup>5</sup> TRRC's Supplemental Application also includes certain "refinements" to the previously approved TRRC I lines, such as adjustments to the 5.7-mile Otter Creek spur, which have not been approved by the STB.

TRRC's Supplemental Application is a new proposal from a new owner. As a result, the STB should institute a new proceeding (e.g., STB FD No. 30186 (Sub-No. 4) or TRRC IV) and require TRRC essentially go back to the beginning of the process to allow proper public and regulatory involvement. For example, the STB has already held public scoping hearing in Montana and TRRC has made public notifications, but those hearing and public notifications were based on the TRRC I route via Miles City.

Moreover, as indicated herein, the STB should significantly expand its Draft Scope of Study and its environmental review to look at the significant impacts associated with the increase in coal trains over BNSF's existing system and impacts to other rail carriers' operations, as was done by the STB in the Dakota, Minnesota & Eastern Railroad Corp. (DM&E) case.<sup>6</sup>

There should be no distinction between TRRC and BNSF. BNSF is one of owners of TRRC, the TRRC officers and directors are also BNSF officers and directors, BNSF will be the operator of TRRC and all of the TRRC-originated coal will move over BNSF's existing system. TRRC has understated, downplayed and virtually ignored the potential downline or downstream impacts on BNSF's existing system by misrepresenting the destination market and significantly understating the potential annual coal volumes.

TRRC maintains that "domestic electric utilities represent the prime demand potential for Otter Creek coal that the TRRC would haul."<sup>7</sup> However, it is very clear that the majority of TRRC coal will move to Pacific Northwest (PNW) export coal terminals - primarily to a massive new export coal terminal near Longview, Washington. TRRC also estimates that the Otter Creek mine will produce approximately 20 million tons of coal per year at full production, which

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<sup>6</sup> STB FD No. 33407, Dakota, Minnesota & Eastern Railroad Corporation Construction Into The Powder River Basin, (DM&E)

<sup>7</sup> Supplemental Application dated December 17, 2012, Operating Plan, page 2.

understates the potential Otter Creek volume and ignores other potential mine sites on the line.<sup>8</sup> In its original ICC application, TRRC projected coal production levels which ranged from 33 to 44 million tons from potential five (5) mine sites.<sup>9</sup> TRRC has also failed to mention other related BNSF and ARCH projects and efforts, which are clearly connected and related to the TRRC project.

As a consequence, the downline impacts on BNSF's existing system and customers will be significantly greater than the impacts described and represented in TRRC's Supplemental Application. As indicated herein, the potential downstream environmental impacts associated with the TRRC application on BNSF's existing system may be much greater than the potential impacts in the DM&E case and the STB evaluated the impacts on DM&E's existing system.

### **TRRC's Long ICC/STB History**

The proposed TRRC rail line has a long regulatory and judicial history and has gone through several changes. It was first proposed in the 1970's. TRRC's original construction application was submitted to the ICC in 1983. Since then, the proposed TRRC rail line has been revised, amended and supplemented numerous times and the subject of numerous ICC, STB and court decisions. To date, the ICC and STB have approved and authorized three (3) previous TRRC proposals:

- **1985** - The ICC first gave approval to TRRC to build and operate an 89-mile rail line between Miles City, Montana, and two termini located near Ashland, Montana (**TRRC I**).<sup>10</sup>

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<sup>8</sup> *Ibid.*

<sup>9</sup> ICC 1985 Final EIS, page 41.

<sup>10</sup> ICC Finance Docket No. 30186, Tongue River R.R. – Rail Construction and Operation – In Custer, Powder River and Rosebud Counties, Montana, served September 4, 1985.

- **1996** - The newly-formed STB authorized TRRC to build an additional 41-mile rail line from Ashland to Decker, Montana. (**TRRC II**)<sup>11</sup>
- **2007** - The STB authorized TRRC to build and operate the so-called “Western Alignment,” which was a 17.3-mile alternate route for a portion of the route already approved in Tongue River II. (**TRRC III**)<sup>12</sup>

Although the TRRC lines have been authorized by the ICC and STB for many years, to date, the line has not been built. TRRC maintains that the line was not built because “the Ashland/Otter Creek coal resources which the line is primarily designed to serve have not been commercially available for development.”<sup>13</sup> However, the lack of strong financial backing, a changing PRB coal market and other factors also played a role.

### **TRRC’s New Ownership and New Plans**

The prospects of the long-dormant TRRC construction project began to change a few years ago when ARCH and BNSF began to make a series of major financial moves:

- **November 2009** - ARCH announced that it had paid \$73.1 million for a lease agreement with Great Northern Properties Limited Partnership (GNP)<sup>14</sup> for its Otter Creek coal tracks, which are estimated to cover approximately 9,600 acres and contain 731 million tons of coal reserves.<sup>15</sup>

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<sup>11</sup> STB Finance Docket No. 30186 (Sub-No. 2), Tongue River Railroad Co. – Rail Construction and Operation – Ashland to Decker, Montana. 1 S.T.B. 809 (1996)

<sup>12</sup> During my time at the STB, I was involved in the decision-making process in a full Board decision served March 11, 2003 in STB Docket No. FD 30186 (Sub-No. 3), Tongue River Railroad Company, Inc. - Rail Construction And Operation – Western Alignment, which involved a proposal to construct a 41-mile line between Ashland and Decker, Montana.

<sup>13</sup> TRRC’s April 19, 2012 filing, page 4. In Tongue River I, TRRC maintained that the primary purpose of the line was to transport coal from Montco mine, which was a partnership between Thermal Energy, Inc. and Tongue River Resources Inc. and had received a permit to open a new mine. (ICC Final EIS, Page 45). Since the Montco mine had previously been “commercially available for development,” TRRC’s statement is not correct.

<sup>14</sup> GNP was formed in 1992 to acquire BNSF’s coal-related assets. It is privately-held company which is apparently part of Natural Resource Partners L.P. (NRP), a master limited partnership that is principally engaged in the business of owning and managing mineral reserve properties. One of the primary owners of NRP and GNP is Corbin J. Robertson, Jr. (see: [www.nrplp.com](http://www.nrplp.com))

<sup>15</sup> ARCH press release dated November 12, 2009 (Appendix GWF-2).

- **March 2010** - ARCH announced that its paid \$85.8 million for a lease of the State of Montana’s Otter Creek tracks, which are estimated to cover 8,300 acres and contain 1.5 billion tons of coal reserves.<sup>16</sup>
- **January 2011** - ARCH announced that it had paid \$25 million for a 38% interest in Millennium Bulk Terminals – Longview, LLC (MBT), which is the owner of a proposed export coal terminal near Longview, Washington.<sup>17</sup> A few days later, ARCH announced that it had reached an agreement with Canada’s Ridley Terminal to “facilitate coal exports to Pacific Rim markets.”<sup>18</sup>
- **July 2011** - ARCH and BNSF reached an agreement with Forrest E. Mars, Jr. (Mars), a longtime opponent of TRRC, under which BNSF, ARCH and Mars acquired the TRRC permits from Mike T. Gustafson, President of TRRC and Wesco Resources.<sup>19</sup>

Under the July 2011 agreement, Mars became partners with BNSF and ARCH and they agreed the not to build the southern extension of the line to Decker (TRRC II and TRRC III). In a Status Report dated November 4, 2011, TRRC indicates that:

“... its new owners have determined that they will not, in the reasonably foreseeable future, construct the portion of the TRRC line south of the Ashland/Otter Creek area. Instead, TRRC will concentrate on moving forward toward the construction of the line between Miles City and the Ashland/Otter Creek area along the Board-approved alignment for that portion of the line.”<sup>20</sup>

To date, this July 2011 agreement has not been provided to parties and the amount paid by ARCH, BNSF and Mars for the TRRC permits has not been not disclosed.<sup>21</sup>

After the ARCH, BNSF and Mars Agreement was reached, BNSF also made some related major financial announcements:

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<sup>16</sup> ARCH press release dated March 18, 2010 (Appendix GWF-3).

<sup>17</sup> ARCH press release dated January 12, 2011 (Appendix GWF-4).

<sup>18</sup> ARCH press release dated January 18, 2011 (Appendix GWF-5).

<sup>19</sup> Letter dated July 18, 2011 to Ed Gulick, NPRC Chairman, from Forrest E. Mars, Jr.

<sup>20</sup> TRRC November 4, 2011 STB Status Report, page 2.

<sup>21</sup> TRRC formally notified the STB of this change in ownership on July 8, 2011. The STB should require TRRC to release this agreement and reveal the terms of the agreement.

- **May 2012** - BNSF announced a planned \$111 million capital program in Montana intended to maintain and improve rail capacity and “will include 956 miles of track surfacing and undercutting work, the replacement of 54 miles of rail and about 210,000 ties, as well as significant signal upgrades for federally mandated positive train control (PTC).”<sup>22</sup>
- **August 2012** - BNSF announced a similar \$106 million capital program to maintain and expand capacity in Washington. BNSF’s projects in Washington include the construction of “*a new lead to access the Port of Longview*,” as well as signal upgrades for federally mandated positive train control (PTC), 1,020 miles of track surfacing and undercutting work, and the replacement of 56 miles of rail and about 178,000 ties.<sup>23</sup>

### **Northern Plains Decision**

Later that year (December 29, 2011), the U.S. Court of Appeals for the Ninth Circuit affirmed in part, reversed in part, and remanded for further environmental review the STB’s decisions in two STB Tongue River proceedings (STB FD 30186 (Sub-No. 2) and FD 30186 (Sub-No. 3)).<sup>24</sup> TRRC subsequently filed a “*Statement of Intent*” with the STB on April 19, 2012, notifying the STB that it “no longer intends to construct the rail lines” that were subject to its applications in TRRC II and TRRC III.<sup>25</sup> Rather, TRRC indicated it would focus on the line as approved in TRRC I (with certain refinements included in TRRC III).

### **TRRC’s Revised Application**

In response to Court’s decision in Northern Plains, TRRC’s announced changes in ownership and plans, petitions from NPRC, and other factors, the STB issued a decision on June 18, 2012 which (in addition to addressing other matters) reopened STB FD 30186 “for the

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<sup>22</sup> BNSF press release dated May 24, 2012 (Appendix GWF-6)

<sup>23</sup> BNSF press release dated August 2, 2012 (Appendix GWF-7)

<sup>24</sup> December 29, 2011 U.S. Court of Appeals for the Ninth Circuit decision in Northern Plains Resource Council, et al. v. Surface Transportation Board, 668 F.3d 1067 (9<sup>th</sup> Cir. 2011) (Northern Plains). The Court’s mandate in the case was issued on March 2, 2012, which terminated the Court’s jurisdiction over the matter.

<sup>25</sup> TRRC’s April 19, 2012 filing, page 1.

purpose of requiring the railroad to file a revised application for the currently proposed rail line and preparing a new environmental review.” In response to the STB’s decision, TRRC submitted a “Revised Application For Construction and Operation Authority” dated October 16, 2012.

TRRC’s Revised Application concerned the authority to construct and operate the rail line that was previously authorized by the ICC under TRRC I (with some “refinements”), which would run south-west approximately 70 miles (MP 69.86) from a junction with BNSF’s main line near Miles City, Montana to junction south of Ashland, Montana, where it splits into: (1) a 7.5-mile line to “Terminus Point 1,” which terminates at the “previously proposed” Montco mine; and (2) a 5.7-mile “Otter Creek Segment” spur to “Terminus Point 2,” which will be ARCH’s Otter Creek coal mine loading station.

Despite the fact that this is one of STB’s largest rail construction cases and the fact that the TRRC proposal has a long (and controversial) history, the STB acted with extraordinary and unprecedented speed by reviewing TRRC’s extensive Revised Application submitted on October 16, 2012 and issuing a decision on October 22, 2012,<sup>26</sup> which served as formal regulatory notices of: Intent to Prepare an Environmental Impact Statement; Availability of the Draft Scope of Study for the Environmental Impact Statement; and Scoping Meetings (which were quickly scheduled and have, indeed, already taken place at various locations in Montana).

The STB’s October 22 decision also included a formal “Request for Comments on Draft Scope.” The STB’s decision states: “Interested parties are invited to submit written comments on the Draft Scope of Study, potential alternative routes for the proposed rail line, and other

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<sup>26</sup> The STB’s 10-page decision was actually decided on October 17, 2012, only one day after it received TRRC’s extensive and lengthy Revised Application. In contrast, in STB FD No. 33407, Dakota, Minnesota & Eastern Railroad Corporation Construction Into The Powder River Basin, (DM&E), the application was submitted by DM&E on February 20, 1998, but the Draft Scope of Study was not issued by the STB until June 10, 1998.

environmental issues and concerns by December 6, 2012, to assure full consideration during the scoping process.” (page 3).<sup>27</sup> Under the STB’s current procedural schedule, interested parties will not have another chance to submit comments until March 1, 2013, which is the due date for comments in support of or opposition to TRRC’s Revised Application.

### **TRRC’s Supplemental Application**

In response to TRRC’s Revised Application on October 16, the STB (without any apparent formal petition or request from TRRC or opposing parties) took another unusual step by issuing a decision on November 1, 2012 which directed TRRC to “file supplemental information related to the *transportation merits* of the revised line TRRC now proposed to build.”<sup>28</sup> The STB set a date of December 17, 2010 as the date for TRRC to supplement the record. Rather than merely supplementing the record to include additional information regarding the “*transportation merits*” associated with of TRRC’s Revised Application, however, TRRC used the December 17, 2012 filing date as an opportunity to totally change the configuration and alignment of the proposed railroad line.

### **The Proposed Colstrip Alignment**

As previously indicated, TRRC changed its preferred route from the 83-mile Tongue River Alternative (which was approved by the ICC in 1986) to the 42-mile Colstrip Alternative. TRRC also altered the Colstrip Alternative so that approximately five miles would generally parallel Greenleaf Road (S-447) rather than follow Roe & Cooper Creek. The ICC recognized that, due to its shorter length, the Colstrip Alternative would have the least environmental impact

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<sup>27</sup> This date was extended to January 11, 2013 by a subsequent STB decision. See decision in STB Docket No. FD 30186, served November 30, 2012.

<sup>28</sup> November 1, 2012 decision, page 1 (emphasis added).

of any of the potential TRRC routes. However, the ICC approved TRRC's preferred route, which would connect with BNSF's main line near Mile City, over the shorter Colstrip Alternative. In approving TRRC's longer preferred Miles City route, the ICC stated "marketing and engineering considerations are critical to the Applicant in selecting the most feasible and practical route. From an engineering and marketing standpoint, the Proposed Rail Line has advantages over the Colstrip Alternative, as well as the other two routes."<sup>29</sup>

Despite the fact that TRRC has alleged that there are environmental and other benefits associated with the Colstrip Alternative, TRRC's recent and sudden switch from the long-time (1985) and previously ICC-approved (TRRC I) route via Miles City to the Colstrip Alternative (which was rejected by the ICC in 1985) represents a major and significant change of the preferred alignment from new owners..

As a result, the STB cannot simply rubber stamp TRRC's new Supplemental Application and should certainly not fast-track this proceeding.. The STB should initiate a new proceeding, i.e., TRRC IV, and require TRRC essentially go back to the beginning of the process to allow proper public and regulatory involvement.

### **Major Change in the Destination Market**

TRRC's recent and sudden switch to the Colstrip Alternative is logical given the fact that the destination market has also significantly changed. The previously approved Miles City route was preferable from a "marketing" standpoint because it resulted in a shorter distance to domestic coal-fired generating stations in the mid-west and east. As recently as 2006, the STB stated that the purpose of the TRRC line from Miles City was for the "transport of coal from

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<sup>29</sup> ICC Final EIS, page i.

existing and future mines in the Powder River Basin and Tongue River Valley to markets in the Midwestern and northeastern states.”<sup>30</sup>

Since TRRC was first proposed, however, the PRB coal market (and the circumstances associated with the proposed construction and operation of the TRRC line in Montana) has significantly changed. When TRRC was first proposed, BNSF dominated the PRB coal market, the BNSF / Union Pacific (UP) joint line in Wyoming had not been built and the Clean Air Act of 1990 (which increased the demand for low-sulfur coal) had not been passed. As a result, PRB coal production skyrocketed in the last 30 years. For example, Montana and Wyoming produced approximately 174 million tons in 1985 and 481 million tons in 2011.<sup>31</sup> However, the PRB coal market now appears to have neared its peak production levels.

In the past few years, there has been a marked decrease in domestic coal generation as a result of numerous factors, such as the increased use of natural gas and new Environmental Protection Agency (EPA) regulations on coal plants. For example, domestic coal consumption dropped by 48 million tons in 2011.<sup>32</sup> Total coal-based power sector generation decreased 6 percent in 2011, to 1,714.9 billion kilowatt hours (kWh), while natural gas generation increased 3.2 percent to 930.6 billion kWh.<sup>33</sup>

A clear indication of this market shift is the fact that Canadian Pacific Railway Company (CP), which acquired DM&E in 2007,<sup>34</sup> recently announced that it was mothballing the proposed DM&E PRB expansion project and putting approximately 600 miles of DM&E lines up for sale

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<sup>30</sup> STB October 2006 Final Supplemental EIS, page I-1.

<sup>31</sup> Data from Energy Information Administration (EIA)

<sup>32</sup> The National Mining Association (NMA) 2011 Coal Producer Survey, page 1.

<sup>33</sup> *Ibid.*

<sup>34</sup> See STB FD No. 35081, Canadian Pacific Railway Company, et al. – Control – Dakota, Minnesota & Eastern Railroad Corp. et al. I submitted expert testimony in this proceeding for the Iowa Northern Railway Company (IANR).

because of weaker domestic coal demand.<sup>35</sup> While domestic coal generation and demand are clearly declining, there has been a concomitant increase in demand for export coal in recent years, which has helped offset the reduction in domestic coal demand. For example, National Mining Association (NMA) states:

“However, partially offsetting the lower demand in the electricity sector were very strong exports of both steam and metallurgical coal. U.S. coal exports in 2011 surged to a level unseen in several decades at 107.3 million short tons.”<sup>36</sup>

Although the domestic coal market is clearly in a state of decline and the export coal market is clearly expanding, TRRC indicates that the “U.S. *domestic electric utilities* represent the prime demand potential for Otter Creek coal that the TRRC would haul.”<sup>37</sup>

TRRC’s Revised Application essentially ignored, and only includes a brief reference to, the booming export coal market in that it merely states that “*additional tonnages could be anticipated for export markets.*”<sup>38</sup> TRRC stated that “actual production may vary considerably depending upon market conditions and/or other business considerations.”<sup>39</sup> In its Supplemental Application, however, TRRC acknowledges (but still downplays) the fact that TRRC coal may move to export coal terminals. TRRC states that “it is not possible to predict at this time where the coal will be delivered after production commences” and “In other words, the coal could move east or west for domestic use or export.”<sup>40</sup>

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<sup>35</sup> See: <http://minnesota.publicradio.org/display/web/2012/12/03/business/candian-pacific-mothbolls-plans-for-coal-country-expansion/>

<sup>36</sup> *Ibid.*

<sup>37</sup> TRRC Revised Application, Exhibit D, Operating Plan, page 2 (emphasis added).

<sup>38</sup> *Ibid.* (emphasis added)

<sup>39</sup> TRRC October 16, 2012 Application, Exhibit D, Appendix A., Verified Statement of William M. Rowlands, President of Otter Creek Coal, LLC, an operating subsidiary of ARCH.

<sup>40</sup> TRRC Supplemental Application, Verified Statement of William M. Rowlands, page 4.

According to the ICC's 1983 Draft EIS, TRRC's original projections "indicate that one-third of the coal will be destined for locations in Oregon and Washington, and two-thirds for locations in South Dakota, Minnesota, Wisconsin, New York, and Pennsylvania."<sup>41</sup> In other words, 1/3 of the traffic would move west from the Miles City interchange with BNSF and 2/3 of the traffic would move east from Miles City.

The domestic coal market in Oregon and Washington is clearly in a state of decline. There are only two major coal-fired electric generating stations in Washington and Oregon (i.e. Centralia, WA and Boardman, OR) and both of these plants are scheduled to close in the near future.<sup>42</sup> If TRRC truly intends to serve the domestic coal market, then most, if not all, of the TRRC domestic coal would move east.

However, it is very clear that the domestic coal market is in a state of decline and the export coal market is expanding. Based on TRRC's recent and sudden switch to the Colstrip Alignment after more than 30 years, which would reduce the rail distance and cost of shipments to PNW export coal terminals, is indicative of this market shift. ARCH's own statements to investors and other information also indicate that "*prime demand potential*" for TRRA coal is clearly the "*fast-growing*" export coal market. As a result, it is also now very clear that most (if not all) of the TRRC coal will move *west* to Longview and other PNW export coal facilities.

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<sup>41</sup> Draft EIS in ICC Docket 30186, served July 15, 1983, page 3-5.

<sup>42</sup> See, e.g., [http://seattletimes.com/html/localnews/2014412221\\_coalplant06m.html](http://seattletimes.com/html/localnews/2014412221_coalplant06m.html) and [http://www.oregonlive.com/business/index.ssf/2010/12/pges\\_coal-fired\\_boardman\\_plant.html](http://www.oregonlive.com/business/index.ssf/2010/12/pges_coal-fired_boardman_plant.html)

## Longview and Other PNW Export Terminals

The Port of Longview is the site of a proposed massive coal export terminal, which is projected to cost \$600 million and have the capacity to ship 48.5 million tons of PRB coal to the Asian markets.<sup>43</sup> ARCH, co-owner of TRRC, also owns 38% of Millennium Bulk Terminals-Longview, LLC, which is served by both BNSF and UP. Obviously, ARCH and BNSF, as partners in TRRC and Longview, would have an economic incentive to ship coal from the TRRC line to Longview and the growing export coal market. At 48.5 million tons per year, Longview would become one of the biggest coal destinations in the U.S. Longview would be far bigger than any domestic coal destination.

For comparison, Norfolk Southern recently completed a major upgrade of its Lamberts Point export coal transloading facility in Norfolk, Virginia (also known as Pier 6), which NS maintains is positioned “to remain the largest and fastest coal transload facility in the Northern Hemisphere.”<sup>44</sup> NS indicates that Pier 6 has an annual throughput capacity of 48 million tons, which would be slightly lower than Longview’s projected capacity.<sup>45</sup> Longview will become the Pier 6 of the west coast. CSX recently stated: “CSX Growing customer demand in the export market played a large factor in 2011's strong results. CSX shipped 40.2 million tons of export coal in 2011, a 34 percent year-over-year increase from 2010.”<sup>46</sup> In other words, more export coal will potentially move from Longview than the total export coal moved by CSX last year via several different major coal export terminals (Newport News, VA; Baltimore, MD; Mobile, AL; Ashtabula, OH; Toledo, OH and other terminals along the inland river system).

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<sup>43</sup> A recent study produced for Millennium by Berk used 44 million metric tons which equated to 48.5 million short tons. See Berk Report, page 3 states which states that “the facility would be expected to begin operations in 2015 and full site capacity of 44 million metric tonnes of coal will be in place by 2018.”

<sup>44</sup> See: [http://www.nscorp.com/nscportal/nscorp/Media/News%20Releases/2012/ns\\_export\\_facility.html](http://www.nscorp.com/nscportal/nscorp/Media/News%20Releases/2012/ns_export_facility.html)

<sup>45</sup> See: [http://www.nscorp.com/nscportal/nscorp/Customers/Coal/Transload/lamberts\\_point.html](http://www.nscorp.com/nscportal/nscorp/Customers/Coal/Transload/lamberts_point.html)

<sup>46</sup> See: <http://corporate-social-responsibility.csx.com/markets/coal.php>

The proposed Longview export coal terminal and other proposed Pacific North West (PNW) export coal terminals are indicative of a recent change in the PRB coal market and a shift away from the declining domestic coal market and a focus on the growing coal export market.<sup>47</sup> In addition to Longview, BNSF also serves the proposed \$500 million Cherry point export coal terminal near Bellingham, Washington, which is projected to have the capacity to export 59.5 million tons per year.<sup>48</sup> In fact, BNSF is likely to move more export coal from Longview and Cherry Point than NS and CSX, *combined*.

Where will the Longview and Cherry Point export coal (over 100 million tons) come from? BNSF's PRB coal origins in Montana, such as ARCH's Otter Creek mine and Signal Peak Energy's Bull Mountain Mine, have obvious geographic and distance advantages over other origins, such as origins on the BNSF/UP joint-line in Wyoming.<sup>49</sup> A recent report by the University of Montana concerning Otter Creek (which is attached to TRRC's Supplemental Application) states:

. . . It takes only quick glance (at a railroad system map) to see that the Montana coal fields are closer to Northwest ports than the Wyoming coal fields. The transportation situation may now be reversed. Just as Wyoming was in a favorable geographic position to serve the fast growth in the south and east, Montana is now better situated to serve these fast growing Asian markets.<sup>50</sup>

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<sup>47</sup> See July 2012 report prepared for Western Organization of Resource Councils titled: *Heavy Traffic Ahead - Rail Impacts of Powder River Basin Coal to Asia by Way of Pacific Northwest Terminals*. I was one of the co-authors of this report. (<http://www.heavytrafficahead.org/pdf/Heavy-Traffic-Ahead-web.pdf>)

<sup>48</sup> An economic analysis prepared by Martin Associates for Gateway Pacific Terminals dated October 27, 2011 states "In the first phase, the terminal is projected to handle 25 million metric tons per year (27.6 million short tons). The second phase will take the terminal capacity up to 54 million metric tons per year" (59.5 million short tons). <http://gatewaypacificterminal.com/gateway-pacific-terminal-at-cherry-point-starts-permit-process/>

<sup>49</sup> BNSF currently moves export coal from Signal Peak (over a newly constructed 35-mile line in Montana) via Roberts Bank Terminal in Vancouver, BC. See: <http://www.coalage.com/index.php/features/2110-signal-peak-energys-bull-mountain-mine-has-pulled-it-together-and-is-pulling-ahead.html>

<sup>50</sup> See, *The Impact of Otter Creek Coal Development on the Montana Economy*, by Patrick M. Barkey, Director, Paul E. Polzin, Emeritus Director, Bureau of Business & Economic Research The University of Montana. May 2012. Page 17.

In all likelihood, a significant amount, if not most, of the Longview coal will originate from ARCH's Otter Creek coal mine and move over BNSF's existing lines in Montana, Idaho, and Washington.

### **DM&E Case and Downline Impacts on Existing System**

On February 20, 1998, DM&E filed an application with the STB which sought authority to construct and operate a new 280-mile line, which would have extended DM&E's existing rail lines to access PRB coal market. DM&E's proposal also involved the rehabilitation of approximately 600 miles of existing rail line in Wyoming, South Dakota, and Minnesota, which it maintained were not subject to the Board's jurisdiction.

The STB clearly has authority to license the construction of new rail lines accessing new markets, such as the proposed TRRC and DM&E construction cases. However, the railroads are usually not required to seek the Board's approval to rehabilitate or improve their existing systems. In the DM&E case, however, in addition to reviewing the impacts associated with the new rail line construction, the Board reviewed the potential environmental impacts associated with DM&E's upgrading or rehabilitating its existing system. In its decision granting final approval to the DM&E project served January 30, 2002, the Board stated:<sup>51</sup>

. . . consistent with our approach in similar cases, . . . the EIS . . . examines the potential environments impacts resulting from increases from rail operations over portions of DM&E's line to be rebuilt as well as the impacts from the construction of the new rail line itself. . . . Thus, the environmental record in this case addresses the rehabilitation, upgrade, and increased use of DM&E's existing line, as well as the construction and operation of the proposed new line. (pages 5-6)

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<sup>51</sup> While at the STB, I participated in the decision-making process associated with the Board's January 30, 2002 decision in STB FD No. 33407.

The potential environmental impacts associated with the proposed TRRC line are similar to, if not greater than, the impacts associated with the DM&E case, which was another proposed expansion to access PRB coal. The DM&E case involves the proposed construction of approximately 280 miles of new rail line and the rehabilitation of approximately 600 miles of existing rail line in Wyoming, South Dakota, and Minnesota.

This case involves the proposed construction of approximately 42 miles of new rail line in Montana and the rehabilitation of nearly 2,000 miles of existing BNSF lines in Montana and Wyoming. In DM&E, the STB looked at the impacts associated with coal production levels at 20 million, 50 million and 100 million tons. Here, the coal production levels may not reach 100 million ton maximum level, but TRRC coal movements are likely to greatly exceed 20 million tons and more likely to be in the 40 to 50 million ton range.

Despite the lower miles and coal tonnage, the potential adverse environmental impacts associated with the proposed TRRC line may be much greater than DM&E. In the DM&E case, the downstream adverse impacts were reduced by the fact there were many possible domestic destinations and many DM&E interchanges from which the coal could move to destinations on other railroads. Here, most of the TRRC-originated coal will likely move to a single destination (i.e., Longview) or relatively few destinations in a relatively small geographic area (i.e. the PNW).

Although smaller than the DM&E case in terms of new construction miles, the proposed TRRC line has many similarities to the DM&E case. First and foremost (and unlike any other previously proposed rail line construction projects considered by the STB), the proposed TRRC and DM&E projects and cases both involve proposed rail expansions to access PRB coal market. And, like DM&E, BNSF (one of the owners and the operator of TRRC) has announced and is

undertaking significant upgrades of its existing lines, which are required to handle, and clearly associated with, the proposed TRRC coal traffic. However, unlike the DM&E case, TRRC makes no mention of ARCH's related investment in Longview or BNSF's related system upgrades and improvements.

### **BNSF's Related Improvements**

Last year, BNSF announced a planned \$111 million capital program in Montana and a similar \$106 million capital program to maintain and expand capacity in Washington. BNSF's projects in Washington include the construction of "*a new lead to access the Port of Longview.*" BNSF touts the benefits of these improvements in Montana and Washington, but makes no mention of the expected increase in PRB coal traffic. However, many, if not most, of these capacity improvements (such the new lead to Longview) are clearly related to the TRRC project and the expected increase in PRB export coal movements. BNSF is reportedly doing major improvements on the line between Billings and Great Falls in apparent anticipation of heavy traffic use in the near future, even though this line, is at this time, is not a CTC line.

The STB should require BNSF to disclose the specifics and costs associated the system improvements (such as the new lead in Longview), which are related to potential export coal movements from TRRC-originated mines.

### **TRRC's Understatement of Coal Volumes**

In addition to misrepresenting the destination market (i.e., domestic versus export), TRRC has significantly understated and misrepresented the potential TRRC coal volumes. TRRC estimates that the Otter Creek mine will produce approximately 20 million tons of coal per year at full production, which understates the potential Otter Creek volume and ignores other potential mine sites on the line.

In its original ICC application, the projected coal production levels ranged from 33 to 44 million tons from potential five (5) mine sites.<sup>52</sup> The Otter Creek mine should be capable of much larger production levels. Moreover, TRRC's Supplemental Application includes a 7.5-mile rail line to serve the "previously proposed" Montco mine. However, TRRA's application excludes potential Montco mine coal volumes. In the ICC's Final EIS, the ICC estimated that Montco mine (which was the only permitted mine at the time) could produce 12 million tons per year. This potential Montco coal production level could be much higher with more modern production techniques. In a 1996 decision, STB stated that "TRRC would still be able to serve the Montco mine, a mine site with an estimated annual coal production capacity of 38 million tons."<sup>53</sup>

The obvious question is: *Why build a 7.6 mile line to Montco if there is no anticipated rail coal volume from this line?* Potential other mine sites were previously considered by the ICC and STB in TRRC I, TRRC II and TRRC III and should be considered by the STB here, which would push the volumes up over the projected volumes TRRC is proposing and greatly exceed the 20 million tons per year number.

TRRC coal volumes are very likely to greatly exceed 20 million tons per year and move in a completely different direction. There are significant transportation differences and environmental impacts associated with:

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<sup>52</sup> ICC Final EIS, page 41.

<sup>53</sup> STB FD 30186 (Sub-No. 2), Tongue River Railroad Co.--Rail Construction And Operation--Ashland To Decker, Montana, served November 6, 1996, page 14.

- TRRC/BNSF moving 20 million tons per year east and west to numerous domestic destinations spread over a wide geographic area: and
- TRRC/BNSF moving up to 48.5 million tons per year west to Longview and a relatively few other PNW destinations in a small geographic area.

Rather than moving east to domestic destinations, the coal will likely move west over BNSF's existing lines. Most of the BNSF existing lines that will be utilized currently handle very little coal movements and will need significant rebuilding and upgrading to handle the additional export coal traffic levels. BNSF recently announced major capital improvements in Montana and Washington coupled with the work that is visible on the Mossmain to Great Falls line are clearly linked to the expected increase in PRB to PNW export coal movements.

### **STB's 8 Trains Per Day Threshold**

TRRC may have understated the potential TRRC coal volumes in order to avoid the STB's 8 trains per day threshold regarding the potential environmental impacts associated with increased traffic on the existing rail system.<sup>54</sup> TRRC indicates that, based on 20 million tons per year, it would handle "3.7 loaded coal trains/day."<sup>55</sup> The 3.7 loaded trains per day equates to 7.4 trains per day, loaded and empty. TRRC states that "Based on projected mine production, TRRC could interchange an average of *seven trains per day* with BNSF in the initial full year of operations."<sup>56</sup> TRRC's 7 trains per day figure is significant because it is conveniently just below the STB's 8 trains per day threshold. The following table shows the potential train per day differences between TRRC's estimated 20 million tons and Longview's 48.5 million tons per year:

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<sup>54</sup> See 49 CFR § 1105.7

<sup>55</sup> TRRC Supplemental Application, Exhibit D, Operating Plan, page 2.

<sup>56</sup> TRRC Supplemental Application, page 28 (emphasis added)

Table 2

Comparison of Trains Per Day at 20 and 48.5 Million Tons Per Year

Ln.	Item	TRRC / BNSF / ARCH Coal to:	
		Declining U.S. Domestic Market	Or Expanding PNW Export Market
1	Tons Per Year	20,000,000	48,500,000
2	Cars Per Train	125	125
3	Load Per Car	118	118
4	Tons Per Trains	14,750	14,750
5	Loaded Trains Per Year	1,356	3,288
6	Days Per Year	365	365
7	Loaded Trains Per Day (L.5/L.6)	3.71	9.01
8	Empty Return Ratio	2.00	2.00
9	Loaded & Empty Trains Per Day (L.7xL.8)	7.43	18.02
10	STB's 8 trains per day Threshold	8.00	8.00

The STB in the DM&E case used a standard or threshold of 8 trains per day (loaded and empty) for the determination of an environmental review of DM&E existing lines:

... Those segments of rail line that meet or exceed the Board's thresholds for environmental review, as defined in 49 CFR 1105.7, will be evaluated. In cases where the Board's environmental rules do not provide a threshold, the EIS will use eight trains per day or more as the threshold for environmental evaluation. (emphasis added).<sup>57</sup>

The potential export coal volumes over many of BNSF's existing lines will easily exceed 8 trains per day DM&E threshold. BNSF does have some available routing options (such as MRL's route in Montana and routing options in Washington), which could lower traffic levels over certain line segments, however, every TRRC/BNSF export coal train will move through

<sup>57</sup> STB FD 33407, decision served June 10, 1998, page 8.

Billings, Montana and Spokane, Washington, which are major population areas, as well as many other environmentally sensitive areas, such as Glacier National Park.

**Conclusion**

TRRC’s recent and sudden switch from the long-time (1986) and previously ICC-approved route via Miles City to the Colstrip Alignment (which was rejected by the ICC in 1986) represents a major and significant change. As a result, the STB should institute a new proceeding (i.e., STB FD No. 30186 (Sub-No. 4) or TRRC IV) and require TRRC essentially go back to the beginning of the process to allow proper public and regulatory involvement.

The STB must also look at the big picture, connect the dots and recognize that the proposed TRRC construction and operation, ARCH’s investments in Otter Creek, ARCH’s expansion of Longview and BNSF’s recently announced capacity improvements (which include a new lead at Longview) are all linked. It is very clear that these projects are related and the STB should recognize this fact. As they say, just “*follow the money*”:

**Table 3**  
**Costs of TRRC and Related Projects**

<b>TRRC and Related Projects</b>	<b>Estimated Cost (Millions)</b>
ARCH Purchase of Otter Creek Coal Lease (GNP and MT)	\$159
ARCH Est. Otter Creek Equipment & Facilities Cost	\$715
ARCH/BNSF Purchase of TRRC’s Permits	\$ ???
ARCH/BNSF TRRC Est. Rail Construction Cost	\$419
BNSF MT & WA Capacity Improvements	\$217
Longview Expansion (ARCH, BNSF and Others)	\$600

ARCH and BNSF have spent or plan to spend well over \$2 billion to access the Otter Creek coal reserves. That is a lot of money for ARCH and BNSF (and savvy investors and billionaires such as Warren Buffet and Forrest Mars) to invest in a declining and more competitive domestic coal market, especially when you consider that BNSF will dominate PNW export coal market and coal from the TRRC line would have a competitive distance advantage over coal from most other PRB mines. These enormous expenditures (and TRRC's recent switch to the Colstrip Alternative) clearly indicate and show that ARCH and BNSF plan to move this coal to Longview and other PNW export coal terminals to take advantage of the expanding export coal market.

STB's proposed Draft Scope of Study is inadequate and incomplete because: it was based on TRRC's misleading and incomplete Revised Application (which is based on a superseded route, i.e., Miles City versus Colstrip); it misrepresents the destination market (i.e., the declining domestic coal market versus the expanding PNW export coal market); and it significantly understates and misrepresents the potential TRRC coal volumes (i.e., 20 million tons which excludes coal from Montco and other potential mine sites).

ARCH and BNSF are the owners of TRRC. BNSF will be the operator of TRRC. ARCH is one of the owners Longview. BNSF serves Longview. The coal will move over BNSF's existing lines, many of which will need significant rebuilding and upgrading to handle the additional export coal traffic levels. As was done by the STB in the DM&E case, the STB's current TRRC proceeding should be significantly expanded to cover the environment impacts over BNSF's existing routes to Longview and other proposed PNW export coal terminals.

In 1983, the ICC described TRRC's Project Purpose and Need as follows:

Estimated strippable coal reserves in excess of 10 billion tons exist in the Ashland/Birney/Otter Creek area. This amount would translate into an energy equivalent greater than that produced by over 30 billion barrels of oil, or enough energy to supply nearly one-third of the nation's entire projected demand in the year 1985. This coal resource has not yet been developed.<sup>58</sup>

The "Purpose and Need" for the proposed TRRC line has obviously changed since 1983. TRRC is no longer needed for an expanding domestic coal market to meet our nation's energy needs, but rather it appears likely that BNSF's and ARCH's true intended "purpose" is to take advantage and exploit the growing and profitable export coal market. Whether there still remains a "public need" for the TRRC project will ultimately be determined by the STB. However, prior to making this determination, the Board should carefully review TRRC's new plans via a new proceeding and significantly expand the proceeding and look at the significant downline impacts over BNSF's existing system.

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<sup>58</sup> ICC Draft EIS dated July 15, 1983, page ii.

VERIFICATION

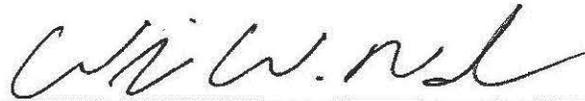
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  ) SS.

I, Gerald W. Fauth III, verify that: I have read the foregoing statement; I know the contents thereof; and those contents are true and correct as stated.



Gerald W. Fauth III

Subscribed and sworn to me this 7th day of January, 2013



Notary Public

My Commission expires:

*February 28<sup>th</sup>, 2014*



Wilson Watts Nash  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. #7343675  
My Commission Expires  
February 28, 2014

**STATEMENT  
OF  
BACKGROUND, QUALIFICATIONS AND EXPERIENCE  
OF  
GERALD W. FAUTH III**

My name is Gerald W. Fauth III. I am President of G. W. Fauth & Associates, Inc. (GWF), an economic consulting firm with offices at 116 S. Royal Street, Alexandria, Virginia 22314. I am a recognized expert on transportation issues with over 30 years experience in the private sector and in the Federal government.

This statement generally describes my background, qualifications and experience. The majority of experience has involved economic, regulatory, public policy and legislative issues primarily associated with, or related to, the U. S. railroad industry. Most of my work has involved regulatory proceedings and related projects before, or related to, the U.S. Surface Transportation Board (STB) and its predecessor, the Interstate Commerce Commission (ICC).

I have extensive experience in working in regulatory and other proceedings and projects involving railroad mergers, transactions, acquisitions, rail line construction, rail line abandonments, rate reasonableness and other railroad related issues. These matters have involved railroad issues on a nation-wide, system-wide and individual railroad line basis.

GWF has been engaged in the economic consulting business for over 50 years. My part time affiliation with GWF began in 1972. I began working for GWF on a full-time basis on May 15, 1978 and was employed by GWF continuously until November 1, 1999 at which time I took a leave of absence in order to take a position with the STB.

At the STB, I served as Chief of Staff for one of the three Board Members appointed by the President, Vice Chairman Wayne O. Burkes. I returned to GWF and consulting work effective June 23, 2003 after Mr. Burkes resigned his position to run for a political office.

Over the years, I have submitted expert testimony before ICC, STB, state regulatory commissions, courts and arbitration panels on a wide-variety of issues in numerous proceedings. In addition, I worked for 3½ years at the STB where I reviewed, analyzed and made recommendations on over 600 written formal decisions that were decided by the entire Board. These proceedings and decisions involved all matters of STB jurisdiction and had an impact on the transportation industry and the national economy.

Railroad transactions have long been the subject of ICC and STB regulatory proceedings and other matters involving: railroad merger and acquisition approval and oversight proceedings; railroad line abandonment proceedings; line sales; feeder line application proceedings; and other railroad transaction-related proceedings. I have been involved in numerous such proceedings and projects as an expert witness and as an STB staff advisor.

For example, I was an expert witness in the last two major Class I railroad merger proceedings: STB Finance Docket No. 32760, Union Pacific Corporation, et al. – Control and Merger – Southern Pacific Rail Corporation, et al. and STB Finance Docket No. 33388, CSX Corporation, et al., Norfolk Southern Corporation, et al. – Control and Operating Leases / Agreements – Conrail, Inc., et al. My testimony in these major merger proceedings concerned the potential adverse competitive impact of these mergers on two key areas.

In addition to my work in major railroad merger proceedings, I have submitted expert testimony in other railroad finance docket and abandonment proceedings before the ICC and STB. In these proceeding, I have developed and submitted evidence relating to the impacted railroad traffic and the valuation and economics of the railroad line at issue (such as: going concern and net liquidation values; freight revenues and traffic; operating costs; maintenance costs; right-of-way valuation; etc).

In addition to my testimony in railroad mergers and other rail finance and transaction proceedings, I served as an original member of the Conrail Transaction Council, which was established by the Board in Finance Docket No. 33388. This council consisted of representatives of the CSX, NS and shipper organization and provided a forum for timely and efficient communication of information and problems concerning the transaction. I was one of the original members of the Conrail Transaction Council and attended every meeting of the council until my employment with the Board.

During my time at the Board, I was actively involved in the STB merger oversight proceedings associated with the UP/SP and Conrail transactions. Perhaps the most significant merger-related proceedings that I was involved in during my time at the Board were STB Ex Parte No. 582, Public Views on Major Rail Consolidations and STB Ex Parte No. 582 (Sub-No.1), Major Rail Consolidation Procedures. These STB major rulemaking proceedings involved extensive oral hearings and written testimony from hundreds of witnesses.

The Board concluded that its existing rules governing railroad mergers and consolidations, which had been developed nearly 20 years earlier, were not adequate for addressing the broad concerns expressed and initiated a major rulemaking proceeding which resulted in a major revision to the Board's railroad merger rules.

I have a significant amount of experience in issues involving railroad rate reasonableness. I was actively involved in the initial ICC regulatory proceedings over 30 years ago in which the ICC first proposed and established guidelines which have since evolved into the STB's current railroad rate reasonableness guidelines. I was actively involved in several of the first cases to test the ICC's then proposed guidelines. For example, I was the primary expert witness in ICC Docket No. 40073, South-West Railroad. Car Parts Co. v. Missouri. Pacific Railroad, which was the *first* case to test the ICC's proposed simplified guidelines, which have since evolved into STB's Three-Benchmark approach.

More recently, I submitted extensive written and oral testimony in STB Ex Parte No. 646 (Sub-No. 1), Simplified Standards For Rail Rate Cases, on behalf of a group of 30 major stakeholders and my testimony was cited by the Board in its decision served September 5, 2007. My work and testimony in these ICC/STB proceedings has helped shape the STB's current railroad rate reasonableness guidelines.

Many of our projects have involved the development of railroad variable cost analyses based on the application of URCS and its predecessor, Rail Form A (RFA). URCS is used to determine STB jurisdiction and is an integral component of the STB's Full-SAC method, new Simplified-SAC standard and recently modified Three-Benchmark approach. I have an extensive working knowledge of the development and application of URCS and RFA. I have prepared URCS cost analyses for thousands of individual railroad movements. I also submitted expert testimony in ICC Ex Parte No. 431 (Sub-No.1), Adoption of the Uniform Railroad Costing System as a General Purpose Costing System for Regulatory Costing Purposes and more recently in STB Ex Parte No. 431 (Sub-No. 3), Review of the Surface Transportation Board's General Costing System.

Proceedings before the Board often involve traffic and market analyses using the Board's Waybill Sample, which is a computer database of approximately 600,000 records of sampled railroad movements. I am extremely familiar with this railroad traffic database. Over the years, I have performed hundreds of analyses using this data which has been used as evidence in merger and other proceedings before the Board.

I am a 1978 graduate of Hampden-Sydney College in Hampden-Sydney, Virginia where I earned a Bachelor of Arts degree. My major areas of study were history and government. My senior paper in college dealt with the History of Railroad Deregulation. I am a 1974 graduate of St. Stephen's School for Boys (now St. Stephen's and St. Agnes School), located in Alexandria, Virginia. My senior project and paper in high school dealt with the ICC and the Energy Crisis of 1973.

My professional memberships included the Transportation Research Forum and the Association of Transportation Law Professionals.

Arch Coal and Great Northern Properties Enter into Montana Coal Lease on Otter Creek Reserves

November 12, 2009 6:03 PM ET

ST. LOUIS, Nov 12, 2009 -- Arch Coal, Inc. (NYSE: ACI) and Great Northern Properties Limited Partnership (GNP) announced today that they have signed a coal lease comprising all of GNP's coal resources in the Otter Creek Tracts located in southeastern Montana. The coal lease will give Arch the right to mine approximately 9,600 acres of GNP-owned minerals that encompass approximately 731 million tons of high-quality, low-cost sub-bituminous coal reserves. As consideration for entering into the lease, GNP will receive a front-end bonus of \$0.10 per ton, or \$73.1 million, which will be payable in equal annual installments over a five-year period.

"The lease of GNP's Otter Creek reserves provides an attractive future growth opportunity for Arch to build a significant position in the Northern Powder River Basin coal region," said Steven F. Leer, Arch's chairman and chief executive officer. "We believe future development of these Montana coal reserves will help competitively serve the northern U.S. power generation market, provide Arch with an additional supply source to export into the fast growing Pacific Rim coal market or possibly house the site of a future coal-conversion facility. Investing in these low ratio reserves now will give us a future cost advantage in the domestic and international energy markets."

"We are pleased to have Arch, a world-class coal company, develop some of GNP's most significant reserves," said Corbin J. Robertson, Jr., chairman and chief executive officer of GNP.

The 731 million tons of low-ratio, sub-bituminous coal reserves, which are low in sulfur dioxide content, are located in the Ashland coalfield southeast of Billings, Mont. These reserves would support the future development of a large-scale, dragline-operated surface coal mine.

The consummation of the Arch-GNP Otter Creek Coal Lease comes on the eve of the State of Montana potentially putting its interests in the Otter Creek coal reserves up for lease as well. The state's ownership comprises about one-half of the Otter Creek area - with GNP and the state owning their respective interests in a checkerboard pattern.

St. Louis-based Arch Coal is the second largest U.S. coal producer. Through its national network of mines, Arch supplies cleaner-burning, low-sulfur coal to U.S. power producers to fuel roughly 8 percent of the nation's electricity. The company also ships coal to domestic and international steel manufacturers as well as international power producers.

Houston-based Great Northern Properties is a privately owned land management company with its lands and minerals largely concentrated in Montana and North Dakota. Formed in 1991 by the Robertson family and American Bailey Mining Limited Partnership to acquire these lands from Burlington Northern Railroad, GNP is the largest private owner of coal reserves in the United States.

*Forward-Looking Statements: This press release contains "forward-looking statements" - that is, statements related to future, not past, events. In this context, forward-looking statements often address our expected future business and financial performance, and often contain words such as "expects," "anticipates," "intends," "plans," "believes," "seeks," or "will." Forward-looking statements by their nature address matters that are, to different degrees, uncertain. For us, particular uncertainties arise from changes in the demand for our coal by the domestic electric generation industry; from legislation and regulations relating to the Clean Air Act and other environmental initiatives; from operational, geological, permit, labor and weather-related factors; from fluctuations in the amount of cash we generate from operations; from future integration of acquired businesses; and from numerous other matters of national, regional and global scale, including those of a political, economic, business, competitive or regulatory nature. These uncertainties may cause our actual future results to be materially different than those expressed in our forward-looking statements. We do not undertake to update our forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required by law. For a description of some of the risks and uncertainties that may affect our future results, you should see the risk factors described from time to time in the reports we file with the Securities and Exchange Commission.*

**Arch Coal Secures State-Controlled Otter Creek Coal Reserves in Montana**

March 18, 2010 2:22 PM ET

ST. LOUIS, March 18, 2010 -- Arch Coal, Inc. (NYSE: ACI) today announced that it was the successful bidder for a state coal lease known as the Otter Creek Tracts located in southeastern Montana. Arch made a one-time bonus bid for the lease of \$85.8 million, payable in April 2010. The coal lease will give Arch the right to mine approximately 8,300 acres of state-owned minerals. Arch now controls approximately 1.5 billion tons of coal in Montana's Otter Creek area, including previous reserve additions such as the coal lease secured in November 2009 through Great Northern Properties Limited.

"We view the combined Otter Creek coal reserves as a strategic platform for future growth in the Northern Powder River Basin," said Steven F. Leer, Arch's chairman and chief executive officer. "The addition of the Montana state reserves further expands and strengthens our position while affording us greater flexibility in future site development. As previously stated, we believe these Northern PRB reserves will help us competitively serve U.S. power producers, supply additional coal for export to emerging Asia or possibly house the site of a future coal-conversion facility."

St. Louis-based Arch Coal is the second largest U.S. coal producer. Through its national network of mines, Arch supplies cleaner-burning, low-sulfur coal to U.S. power producers to fuel roughly 8 percent of the nation's electricity. The company also ships coal to domestic and international steel manufacturers as well as international power producers.

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## Arch Coal Acquires Equity Interest in West Coast Terminal

January 12, 2011 8:26 AM ET

ST. LOUIS, Jan. 12, 2011 -- Arch Coal, Inc. (NYSE: ACI) today announced that it has acquired a 38 percent interest in Millennium Bulk Terminals-Longview, LLC ("MBT"), the owner of a bulk commodity terminal on the Columbia River near Longview, Wash., in exchange for \$25 million plus additional consideration upon the completion of certain project milestones.

"This transaction gives us a direct stake in participating in the growth of U.S. coal exports off the West Coast," said Steven F. Leer, Arch's chairman and chief executive officer. "With our superior operating position in the Powder River Basin and Western Bituminous Region, we have the capability to service growing coal demand in Asia, the world's largest and fastest-growing coal market. We believe this first project - along with others in the pipeline - will provide Arch with more exposure to the seaborne thermal market and will further unlock the value inherent in our western coal assets."

Under terms of the agreement, Arch will control 38 percent of the terminal's throughput and storage capacity to facilitate export shipments of coal off the west coast of the United States. The facility will be capable of handling panamax-sized vessels, which account for the vast majority of the seaborne thermal coal trade for the Asia-Pacific market. The terminal also is dual served by the Union Pacific and Burlington Northern Santa Fe railroads, which will provide Arch with the flexibility to export its southern Powder River Basin and Western Bituminous coals, and eventually coal from its recently-acquired Montana reserves.

The MBT terminal, a former aluminum smelter site, is currently operated as a bulk commodity facility. MBT continues to work on obtaining the required approvals and necessary permits to complete dredging and other upgrades to enable coal, alumina and cementitious material shipments through the brownfield terminal. Once completed, coal shipments could begin in 2012. As currently planned, the MBT facility will utilize existing infrastructure with some minor modifications to handle loading 5 million tons of coal per year in addition to other types of bulk commodities.

Encompassing more than 400 acres, the industrial site offers the potential for terminal expansion should market demand warrant. Should MBT elect to expand the facility, necessary regulatory approvals would be sought and additional infrastructure investment would be required.

MBT recently completed the purchase of the marine terminal from Chinook Ventures, Inc. Australia-based Ambre Energy owns the remaining 62 percent of the terminal. Ambre Energy is a progressive mining and technology company, acquiring coal and oil shale resources in Australia and the United States. "We are pleased to be partners with Ambre and value their experienced management team," said John W. Eaves, Arch's president and chief operating officer.

According to MBT estimates, the terminal development project should create 120 temporary jobs during the build-out of the facility, and ultimately would result in 70 permanent jobs from ongoing operations at the terminal. The construction of the export facility will generate \$2.7 million in sales tax revenue for state and county governments, while expected income tax revenue - once the facility is fully operational - will provide \$1.2 million annually for state and county governments.

St. Louis-based Arch Coal, Inc. is the second largest U.S. coal producer. Through its national network of mines, Arch supplies cleaner-burning, low-sulfur coal to fuel roughly 8 percent of the nation's electricity. The company also ships coal to domestic and international steel manufacturers as well as international power producers.

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Arch Coal Announces Agreement With Canada's Ridley Terminal for Pacific Coast Exports

January 18, 2011 4:52 PM ET

ST. LOUIS, Jan. 18, 2011 -- Arch Coal, Inc. (NYSE: ACI) today announced an agreement with Canadian Crown Corporation Ridley Terminals Inc. ("RTI") - a coal and other bulk commodity marine terminal located near Prince Rupert, British Columbia - to facilitate coal exports to Pacific Rim markets. The five-year agreement will give Arch throughput capacity at the terminal of up to 2 million metric tons of coal for 2011 and up to 2.5 million metric tons of coal for 2012 through 2015.

"This transaction is another important step in accomplishing our strategic objective of expanding Powder River Basin coal sales into the Asia-Pacific region," said Steven F. Leer, Arch's chairman and chief executive officer. "This throughput agreement gives us direct, immediate access to the growing seaborne thermal market. It also complements our recently announced investment in the Millennium Bulk Terminal in Longview, Wash., and other continuing terminal negotiations."

RTI can load up to 12 million metric tons of coal annually, with expansion plans that could increase the facility's capacity to 24 million metric tons by 2015. Coal accounts for more than 80 percent of RTI's total volume, and Asia is the primary destination for the products shipped through the terminal. The terminal shipped 8.3 million metric tons of coal during 2010.

"RTI's vision is to provide value to its parent company and expand its role as a leading trade gateway between North American and world markets," said George Dorsey, president of Ridley Terminals. "This agreement is a very important contract for the terminal. Arch Coal's guaranteed U.S. coal volumes will support our goal of doubling our capacity by 2015."

Located on Ridley Island, RTI affords reduced sailing time to Asia - by more than one day compared to Vancouver, and nearly three days compared to Long Beach, Calif. RTI can handle panamax as well as capesize vessel loadings of up to 280,000 metric tons.

St. Louis-based Arch Coal, Inc. is the second largest U.S. coal producer. Through its national network of mines, Arch supplies cleaner-burning, low-sulfur coal to fuel roughly 8 percent of the nation's electricity. The company also ships coal to domestic and international steel manufacturers as well as international power producers.

*Forward-Looking Statements: This press release contains "forward-looking statements" - that is, statements related to future, not past, events. In this context, forward-looking statements often address our expected future business and financial performance, and often contain words such as "expects," "anticipates," "intends," "plans," "believes," "seeks," or "will." Forward-looking statements by their nature address matters that are, to different degrees, uncertain. For us, particular uncertainties arise from changes in the demand for our coal by the domestic electric generation industry; from legislation and regulations relating to the Clean Air Act and other environmental initiatives; from operational, geological, permit, labor and weather-related factors; from fluctuations in the amount of cash we generate from operations; from future integration of acquired businesses; and from numerous other matters of national, regional and global scale, including those of a political, economic, business, competitive or regulatory nature. These uncertainties may cause our actual future results to be materially different than those expressed in our forward-looking statements. We do not undertake to update our forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required by law. For a description of some of the risks and uncertainties that may affect our future results, you should see the risk factors described from time to time in the reports we file with the Securities and Exchange Commission.*

**News Release**

**BNSF Plans \$111 Million Capital Program in Montana to Maintain and Improve Rail Capacity**

**FORT WORTH, TEXAS, May 24, 2012:**

BNSF Railway Company (BNSF) plans to invest an estimated \$111 million on maintenance and rail capacity improvement projects in Montana this year.

BNSF will continue its robust track maintenance program in Montana, which will include 956 miles of track surfacing and undercutting work, the replacement of 54 miles of rail and about 210,000 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 Montana businesses and communities, and will expand opportunities to create more jobs and growth for the Montana economy," said Matthew K. Rose, Chairman and Chief Executive Officer.

The planned capital investments in Montana 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 Montana. 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**

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](http://www.BNSF.com).

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<http://www.bnsf.com/media/news-releases/2012/may/2012-05-24a.html>

## News Release

### **BNSF plans \$106 million capital program in Washington to maintain and expand rail capacity**

**FORT WORTH, TEXAS, August 2, 2012 :**

BNSF Railway Company (BNSF) plans to invest an estimated \$106 million on maintenance and rail capacity improvement and expansion projects in Washington this year.

BNSF's 2012 capacity enhancement projects in Washington include the construction of a new lead to access the Port of Longview, as well as significant signal upgrades for federally mandated positive train control (PTC).

BNSF will also continue its robust track maintenance program in Washington, which will include 1,020 miles of track surfacing and undercutting work, and the replacement of 56 miles of rail and about 178,000 ties.

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

The planned capital investments in Washington 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 Washington. 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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