

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

TONGUE RIVER RAILROAD COMPANY -- RAIL CONSTRUCTION
AND OPERATION -- WESTERN ALIGNMENT IN ROSEBUD AND
BIG HORN COUNTIES, MONTANA

REPLY OF TONGUE RIVER RAILROAD
COMPANY TO COMMENTS ON THE APPLICATION
FOR CONSTRUCTION AND OPERATION AUTHORITY
FOR THE PROPOSED WESTERN ALIGNMENT

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Pursuant to the procedural schedule established by the Board on June 23, 1998, applicant Tongue River Railroad Company ("TRRC") hereby submits its reply to comments filed concerning TRRC's April 27, 1998 Application for Construction and Operation Authority ("Application"). The Application seeks authority to construct the southernmost portion of TRRC's line in southeastern Montana along the "Western Alignment" in lieu of a parallel route previously approved by the Board. This reply addresses substantive comments on the merits of the Application, most of which appear in the filings of the United Transportation Union-General Committee of Adjustment (GO-386) and United Transportation Union-Montana State Legislative Board (UTU-MT) (jointly, "UTU Parties"),¹ the Northern Cheyenne Tribe and

¹ The UTU Parties initially filed comments on June 1, 1998, to which TRRC replied on June 8, 1998. To the extent the UTU Parties repeat or incorporate those earlier comments in their comments dated September 16, 1998, TRRC incorporates by reference its June 8 reply.

Native Action, Inc. (jointly, "Northern Cheyenne"), the Northern Plains Resource Council, Inc. ("NPRC") and certain private parties, including Mr. Mark Fix and the Lower Tongue River Protection Association ("LTRPA").²

Many of the comments raise environmental issues.³ To the extent they have not already been fully addressed in the environmental documents prepared with respect to the prior approvals TRRC has received for the construction of its line, those issues are more appropriately addressed through the environmental process being handled by the Board's Section of Environmental Analysis ("SEA"). On July 10, 1998, SEA served a notice in this proceeding announcing its intention to prepare a Supplemental Environmental Impact Statement ("SEIS") with respect to the Western Alignment, and comments have already been filed regarding the scope of that SEIS. Comments on the SEIS scope were filed by many of the same parties (including NPRC, Northern Cheyenne and UTU) that have filed comments on the merits of the Application. TRRC filed its reply to comments on the scope of the SEIS on September 8, 1998. Accordingly, TRRC will not here reply to comments that relate strictly to environmental issues, which it has addressed and will continue to address with SEA as the preparation of the SEIS moves forward.

In addition, numerous comments, largely cumulative, were submitted by individuals on form letters. TRRC will not respond individually to each and every form letter or

² Mr. Fix is the President of LTRPA and signed the LTRPA comments on its behalf.

³ Among the environmental issues raised in comments on the merits of the Application are issues concerning earth movement (cut and fill), historical sites (such as the Battle Butte Battlefield), cultural resources, native vegetation, noxious weeds, water quality, air quality, fire control and socioeconomic impacts.

to cumulative comments; however, it will address all transportation issues that have been raised, either generically or in reply to the more detailed comments of other parties.

While this reply responds to comments opposing the Application, the Board should not lose sight of the fact that there is also widespread support for the Tongue River Railroad. The Application contained letters of support from the Governor of Montana, all three members of United States Congressional delegation from Montana, and five prospective TRRC utility customers. An additional 56 letters of support are included with this reply, in appendices B, C and D. These letters come from a wide variety of sources, including Montana government officials at the state, county, and city levels, numerous Montana landowners, including some whose land will be crossed by the Tongue River Railroad and many Montana businesses and residents. The consistent theme in their comments is that the Tongue River Railroad will greatly benefit the Montana economy and assist in the development of coal reserves that are much needed by the Nation. As the majority leader of the Montana House of Representatives succinctly states:

Not only does the TRRC project allow Montana to play an important role in our national energy policy, but it represents significant economic and employment benefits for our state and rural communities.

October 14, 1998 Letter from Larry Grinde at 1 (Appendix B). Responding to those who oppose the Application, Mr. Grinde asserts:

I am also aware of the concerns of opposition parties and the objections they have raised with regard to the Western Alignment. I believe such concerns and criticisms are based more upon their long-standing opposition to the entire project, rather than a concern over the Western Alignment in particular. The TRRC project and

the potential for coal development in this area of our state has been studied and reviewed time and time again.

Id. at 2. Mirroring the comments of many others, Mr. Grinde calls for the Board's expeditious approval of the Application stating: "The opportunities are here and now – and it is time that we move ahead in a responsible manner to complete the approval process and begin construction."

Id.

I. THE LIMITED SCOPE OF THE APPLICATION

It is imperative to keep in mind that the limited scope of TRRC's Application given the construction and operation authority previously granted by the Board and its predecessor, the Interstate Commerce Commission ("ICC"). In 1986, the ICC approved TRRC's application to construct an approximately 89-mile rail line between Miles City, Montana, and two termini: one in Rosebud County, Montana (near the town of Ashland) and the other in Powder River County, Montana (near an area known as Otter Creek) "to meet the demonstrated need of shippers for rail service." See Tongue River Railroad Company -- Rail Construction and Operation -- in Custer, Powder River and Rosebud Counties, Montana, Finance Docket No. 30186 (not printed) (served Sept. 4, 1985), modified, (not printed) (served May 9, 1986) ("TRRC I") at 13. In 1996, the Board approved TRRC's application to construct an approximately 41-mile rail line extension between Ashland and Decker, Montana, concluding "that TRRC has shown the public demand necessary to support this application." See Tongue River Railroad Company -- Rail Construction and Operation -- Ashland to Decker, Montana, Finance Docket No. 30186 (Sub-No. 2) (not printed) (served Nov. 8, 1996) ("TRRC II") at 15. Under those decisions, TRRC has already obtained approval to construct and operate a 130-mile rail line from Miles City to Decker.

The instant Application seeks approval to construct and operate over the “Western Alignment” in Rosebud and Big Horn Counties, Montana, rather than the previously approved “Four Mile Creek Alternative,” for the southernmost portion of the project. Approval of the Western Alignment would allow construction and operation over an approximately 17.3-mile line of railroad in lieu of the previously approved 29.4 miles of line using the Four Mile Creek Alternative.

Notwithstanding the limited scope of this Application -- and the fact that the only issue it presents is whether TRRC can construct the southernmost 17 miles of its line along an alternative, generally parallel, alignment to that already approved -- several of the commenting parties have attempted to relitigate issues already decided in TRRC I and TRRC II, or to raise new issues concerning the TRRC project that have little, if anything, to do with the Western Alignment. The Board should not reopen long-settled matters such as the viability of the TRRC project or its consistency with the public interest. The issue here is whether the Western Alignment routing satisfies the test of section 10901, not whether the TRRC line as a whole should be built. That latter issue has already been decided, even if some parties remain unsatisfied with the outcome.

II. THE STATUTORY STANDARD

The UTU Parties supported by Northern Cheyenne, LTRPA and Mr. Fix, contend that the statutory standard set forth in 49 U.S.C. § 10901(c) prior to its amendment by the Interstate Commerce Commission Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (“ICCTA”), should govern this proceeding under the ICCTA’s savings provision, Section 204(b)(1). See UTU Parties’ Comments at 8; see also Northern Cheyenne Comments at 2;

LTRPA Comments at 1; Fix Comments at 1, 3. This argument is premised on their contention that the Western Alignment is not a “new” proposed line, but instead relates back to the original TRRC docket initiated in the mid-1980’s. That contention is plainly wrong.

The ICCTA “savings provision” provides that changed statutory standards generally will have prospective effect only and will not affect proceedings that were pending as of January 1, 1996. Since TRRC’s application in Finance Docket No. 30186 (Sub-No. 2) was pending on that date, the Board properly applied the former “public convenience and necessity” standard of 49 U.S.C. § 10901(c) when it approved TRRC’s application to construct the Ashland to Decker extension. See TRRC II at 14. The former standard also would have applied if the Board had granted TRRC’s July 1997 petition to reopen the Sub-No. 2 proceeding to consider the merits of the Western Alignment.

However, as the UTU Parties acknowledge (see UTU Parties’ Comments at 3), the Board denied TRRC’s petition to reopen and invited TRRC to submit a new application. See Tongue River Railroad Company -- Rail Construction and Operation -- Ashland to Decker, Montana, Finance Docket No. 30186 (Sub-No. 2) (not printed) (served December 1, 1997) (“December 1997 Decision”) at 7-8.⁴ That action terminated the proceeding that was pending on the effective date of the ICCTA (i.e., Finance Docket No. 30186 (Sub-No. 2)), and thereby eliminated any basis on which the former “public convenience and necessity” standard could apply to the instant Application.

⁴ Indeed, several of the parties that have submitted comments in this proceeding, including NPRC, Northern Cheyenne, and UTU, opposed TRRC’s petition to reopen Sub-No. 2. Id. at 2.

By denying TRRC's petition to reopen without prejudice to the filing of a new railroad construction and operation application, the Board in effect required TRRC to initiate a new proceeding before the merits of the Western Alignment could be considered. See December 1997 Decision at 7-8. The Application now before the Board in Finance Docket No. 30186 (Sub-No. 3), was filed more than two years after the ICCTA took effect, and clearly was not "pending before the ICC" on January 1, 1996. Thus, the ICCTA "savings provision" has no applicability here.

The UTU Parties also argue that there is "very little, if any, difference in the required findings. At most the burden of persuasion may shift." UTU Parties' Comments at 8 n.7. However, the changes to the statute are far more significant than UTU suggests. Under the old standard, the agency had to find that "the present or future public convenience and necessity require or permit the construction . . . and operation of the railroad line." 49 U.S.C. § 10901(a) (1995). TRRC II and TRRC I each affirmatively found that standard to be satisfied. TRRC II at 15-16; TRRC I at 26-27. By contrast, the statute as it now stands provides that a construction and operation application must be approved "unless the Board finds that such activities are inconsistent with the public convenience and necessity." 49 U.S.C. § 10901(c) (emphasis added).

As the Supreme Court has stated, "[w]hen Congress acts to amend a statute, we presume it intends its amendment to have a real and substantial effect." Stone v. INS, 514 U.S. 386, 397 (1995). The Board has recognized that the amendment of the old section 10901(a) "public convenience and necessity" standard was a meaningful one. Under the new law, it is the parties opposing the application who must, in the first instance, present "strong evidence challenging the elements that make up the 'public convenience and necessity' determination,"

and show that granting the application would be inconsistent with that standard. Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin, Finance Docket No. 33407 (not printed) (served July 16, 1998) at 4. Only then must an applicant submit an affirmative response to such evidence. Id. This is consistent with the conclusion of both the Board and the courts that prior changes to the public convenience and necessity standard in both the Staggers Rail Act of 1980 and the Motor Carrier Act of 1980 made a substantive change in the law.⁵ The Board accordingly should apply the new statutory standard and, because there is no basis for a finding that the Western Alignment is “inconsistent with the public convenience and necessity,” approve the Application. See Application at 16.

III. NEED FOR TRRC’S PROPOSED SERVICE

NPRC’s principal claim is that there is no need for the Tongue River Railroad because TRRC’s projections of the volume of Montana coal that will be developed and moved by the TRRC are overstated. See NPRC Response at 7-14. The Northern Cheyenne raise a similar argument (Northern Cheyenne Response at 2), as do several individuals.

This same argument was raised by NPRC in the proceeding on TRRC’s application to construct the Ashland-Decker extension. See, e.g., NPRC Response at 9, 11. The Board appropriately rejected NPRC’s claim in TRRC II, stating:

NPRC has argued that the line is either not viable (alleging a lack of existing or future demand), or that adequate

⁵ See, e.g., Alameda Corridor Construction Application, Finance Docket No. 32830 (not printed) (served May 13, 1996) at 7 n.8 (discussing the Staggers Act’s liberalization of the standard); Kenosha Auto Transport Corp. v. United States, 684 F.2d 1020, 1023-25 (D.C. Cir. 1982) (noting that Motor Carrier Act of 1980, which changed the statutory language regarding public convenience and necessity in a manner virtually identical to the change made in ICCTA, “substantially altered” the public convenience and necessity standard).

transportation services are currently available. However, the demand for this service is self-evident from the potential users' support of this application, as the buyers of TRRC's services comprise one of the cornerstones of TRRC's financing. Moreover, if there is a lack of public demand for the proposed line, it will not be built. We also note that the demand for TRRC's services will be more affected by whether it can offer a more efficient transportation service in conjunction with BN than BN can now offer on its own for coal, rather than by whether TRRC can create totally new markets.

TRRC II at 16. The Board concluded that TRRC had demonstrated the public demand necessary to support the application. Id. at 15. Moreover, in doing so, it commented favorably upon the fact that utilities who could use transportation services offered by TRRC had submitted statements in support of the project, and that numerous Montana officials, including the Governor, both United States Senators and state legislators, supported the project based upon benefits it will generate for the state. Id. at 15-16.

The Board's conclusion in TRRC II remains valid today. TRRC's prospective utility customers -- including Detroit Edison, Commonwealth Edison Company, Minnesota Power & Light Company, Midwest Energy Resources Company and Northern States Power Company -- strongly support the Application.⁶ Many Montana public officials, including Governor Marc Racicot, Senators Conrad Burns and Max Baucus, Congressman Rick Hill and numerous state and local officials also support the Application.⁷ Montana landowners, business groups and individuals also have recognized that public convenience and necessity will be served by the Tongue River Railroad.⁸ In addition, BNSF, which did not take a position regarding the

⁶ April 1998 Application, Appendix C.

⁷ April 1998 Application, Appendix B.

⁸ Letters of Support, Appendices C and D.

Tongue River Railroad in either TRRC I or TRRC II, has expressed its support for the Western Alignment through verified statements by its officials.⁹

In any event, NPRC has not substantiated its claim that TRRC's Montana coal projections are wrong. TRRC's projections of the volume of Montana coal it will transport were presented in the April 22, 1998 verified statement of Ronald McMahan, the president of Resource Data International ("RDI"), which is included in Appendix A to the Application (hereafter "McMahan VS"). Mr. McMahan's Montana coal projections were not developed for this proceeding. They were taken from RDI's annual publication, Outlook for Coal and Competing Fuels ("Outlook"). Since 1985, RDI has published this forecast of demand and prices for coal throughout the United States, not just Montana coal. McMahan VS at 1.

NPRC argues that the RDI coal projections contained in Mr. McMahan's verified statement are wrong. In doing so, it relies primarily on three sources – (1) statements from a 1996 study commissioned by the Governor of Montana entitled, "Coal Market Potential and Regional Competitiveness Study Selected Coal Fields of Montana" (hereafter "Coal Market Potential Study" or "1996 Study"); (2) a January 1994 Report entitled "The Tongue River Railroad Extension and the Marketability of Montana Coal" by John Duffield, et al. (hereafter "Duffield Report") and (3) the verified statement of NPRC's witness Edward Evert (hereafter "Evert VS"). None of these sources undercuts RDI's Montana coal projections.¹⁰

⁹ April 1998 Application, Appendix A, verified statements of Messrs. Swinton, Parker, Kraemer and Mahle; October 1998 rebuttal verified statements of Kraemer and Siegele, attached in Appendix A to this Reply.

¹⁰ NPRC's argument also fails to recognize that Mr. Swinton of BNSF predicts that construction of the Tongue River Railroad will facilitate the development of vast Montana coal reserves. Verified Statement of Gregory T. Swinton at 2-3 (April 1998 Application, Appendix A).

As NPRC acknowledges, the Coal Market Potential Study was commissioned by Governor Racicot. (NPRC Response at 9). That study's objective was to:

identify, to the extent possible, the competitive constraints and/or advantages current public policy is placing on the State's coal producers, and to determine whether such policies are likely to hinder or to promote development and extraction of the State's coal resources in the rapidly changing and intensely competitive markets anticipated in the future.

Coal Market Potential Study, Vol. I, at 1.¹¹ The results of the study were to “serve as input to policy-makers for possible modifications to public policies to ensure the optimum utilization of the State's coal resources and maximum economic and environmental benefits to the State's citizens.” Id.

The 1996 Study specifically addressed the Tongue River Railroad and concluded that Montana coal development projects “will not be initiated until a competitive means of moving coal from the Ashland area is present, and the TRR, either as presently proposed or in some variation, is an obvious way to accomplish this.” Id. at 106 (emphasis added). The 1996 Study also found that the TRRC project will probably move forward when BNSF “becomes a supportive partner in spirit if not in ownership.” Id. at 107. BNSF's support for the project is now a matter of record.

Governor Racicot clearly was not discouraged by the results of the study. As noted, the Governor has expressed his support for this Application, and has described the Tongue

¹¹ Cited portions of the 1996 Study are attached at Appendix E.

River Railroad as “an important and vital link to ensure a strong, competitive and growing coal industry in Montana.”¹²

NPRC cites the 1994 Duffield Report to argue that negative impacts on Montana's existing coal production have not been adequately addressed. See NPRC Response at 13-14. NPRC submitted the same report as support for the same contention in the TRRC II proceeding. NPRC's witness, Dr. Silverman, now states that he has reexamined this report and has concluded that it remains valid. NPRC Response, Exhibit C. Dr. Silverman claims that the Duffield Report's analysis “has never been successfully rebutted.” (See NPRC Response, Exhibit C at 3.)

In fact, however, TRRC filed a substantial rebuttal to the Duffield Report on May 9, 1994. That rebuttal consisted of a twenty-page argument, a rebuttal report from RDI and seven rebuttal verified statements, including statements from two utilities and two companies that have Montana coal reserves. See May 9, 1994 Rebuttal of the Tongue River Railroad Company to NPRC Economic Report, Finance Docket No. 30186 (Sub-No. 2) (hereafter “TRRC 1994 Rebuttal”). TRRC's rebuttal demonstrated that the Duffield Report contained major statistical errors that called its conclusions into question and that existing Montana mines would not be harmed by the construction of the Tongue River Railroad. Id. TRRC hereby incorporates by reference the arguments and evidence presented in the TRRC 1994 Rebuttal on these points. The Duffield Report did not support NPRC's argument when it was first presented in 1994, and it does not support NPRC's argument today.

¹² March 20, 1998 Letter from Governor Racicot at 1. This letter appears in Appendix B to the Application.

Finally, NPRC relies upon the testimony of Edward Evert. Mr. Evert's primary criticism of RDI's Montana coal projections is that they allegedly do not distinguish between Southern Powder River Basin ("SPRB") coal, which TRRC purportedly "will not capture[]", and Northern Powder River Basin ("NPRB") coal, which TRRC will transport. See NPRC Response at 11-13. According to Mr. Evert, this failure is fatal to the analysis because there is an "overwhelming preference for SPRB coal." Id. at 12.

As a review of Mr. McMahan's verified statement demonstrates, Mr. Evert is simply wrong in concluding that Mr. McMahan did not distinguish between NPRB and SPRB coal. Mr. McMahan testified that

[w]ithin the Powder River Basin, we draw a distinction between the North Powder River Basin ("NPRB") which is in Montana, and the South Powder River Basin ("SPRB") of Wyoming. . . . Over the past several years, RDI has been forecasting the potential growth in demand for NPRB coal on the assumption that a number of barriers to the development of new, low-sulfur, high-Btu mines are overcome. In particular, all of our projections for demand from the NPRB, are based on the assumption that viable transportation becomes available to serve undeveloped coal reserves in the Tongue River region.

McMahan VS at 2.

Moreover, as Mr. Chris Leshock of RDI explains in his rebuttal verified statement attached in Appendix A to this Reply (hereafter "Leshock RVS"), NPRB coal production, especially compliance coal production, has in fact been growing. It increased from 36.9 million tons in 1991 to 40.8 million tons in 1997. Leshock RVS at 12. The State of Montana projects a

record year of 42 million tons in 1998.¹³ Id. NPRB coal also is being used or tested in new markets, including South Dakota, Manitoba, Kansas and Mississippi. Id. at 6-7.¹⁴

Mr. Evert also attacks the RDI projections because they do not factor in the Dakota, Minnesota & Eastern Railroad ("DM&E") proposal to serve SPRB coal origins, which he argues, will increase the competitive pressure on Montana coal. NPRC Response at 12. However, it is premature to predict what impact, if any, the DM&E project would have on the competitive situation in the PRB. DM&E does not currently serve the SPRB, and no decision has yet been issued on DM&E's pending application to construct a rail extension that would allow it to serve the region. In any event, there already is rail competition in the SPRB -- both BNSF and Union Pacific serve Wyoming mines. Thus, it is unclear what impact, if any, another rail carrier would have on the PRB competitive situation.

IV. ISSUES REGARDING POTENTIAL OPERATIONS BY BNSF

The UTU Parties argue that the Application must be found to be inadequate unless BNSF, which may operate trains on the TRRC line, submits further evidence concerning operating plans and anticipated financial results. See UTU Parties' Comments at 5-8. There is no merit to that argument. Consistent with the requirements of 49 C.F.R. § 1150.5, TRRC

¹³ While NPRB compliance coal production has grown in recent years, Mr. McMahan's verified statement demonstrates that unless additional compliance coal reserves are developed, Montana's existing compliance coal mines will not be able to satisfy the demand for such coal by 2005.

¹⁴ Mr. Leshock's RVS provides a detailed rebuttal to the points raised in the verified statements of Mr. Evert and Dr. Silverman. Leshock RVS at 2-17. Mr. Leshock's RVS also provides a response to some discrete points made by private parties relating to Montana coal production. Leshock RVS at 17-20.

provided an extensive Operating Plan in its Application before the Board, supplementing the operating plans in the applications approved in TRRC I and TRRC II. See Exhibit D and Verified Statement of Robert H. Leilich (April 1998 Application, Appendix A).

UTU does not argue that TRRC's Operating Plan is deficient, but apparently contends that a second, equally detailed operating plan should have been presented to show how the line would be operated by BNSF. At this time, however, no agreement has been reached for BNSF to operate over the TRRC line. See Rebuttal Verified Statement of Thomas G. Kraemer, BNSF Vice President, Coal and Grain Operations, at ¶¶ 3-7 ("Kraemer RVS"), Appendix A to this Reply. To date, BNSF's role has been confined to supporting the TRRC project and providing engineering advice to facilitate the TRRC project. Kraemer RVS at ¶¶ 5, 7. This limited role hardly renders the Application inadequate or incomplete for failure to present detailed information on what are, at this time, no more than speculative BNSF operations.¹⁵ If and when an agreement is reached with BNSF, information concerning BNSF's proposed operations will be presented to the Board to the extent and in the manner required at that time. Kraemer RVS at ¶¶ 5, 8.¹⁶ UTU also offers no support for the proposition that BNSF financial data is relevant to the Application and offers no reason why such evidence must now be presented given the limited nature of this Application.

¹⁵ As Mr. Kraemer states, BNSF and TRRC have been engaged in arms-length negotiations, which have been lengthy and complex. Kraemer RVS at ¶ 7. UTU's suggestion that TRRC is a front of some sort for BNSF could not be further from the truth.

¹⁶ While TRRC was under no obligation to do more, in view of the possibility that BNSF might operate the line, TRRC's Application was supported by the initial verified statement of BNSF witness Kraemer which presented an outline of how BNSF would operate over the TRRC line were an agreement to be reached for such operations.

Moreover, as noted above, the only issue before the Board in this proceeding is whether to authorize TRRC's construction and operation over the Western Alignment, as opposed to the already-approved Four Mile Creek Alternative. UTU offers no reason why, in the context of the narrow issue before the Board, TRRC should be required to present extensive operating data addressing the possibility of BNSF operations over the entire TRRC line. Again, UTU is seeking to make much more of this proceeding than is appropriate, overlooking the fact that the only issue here is whether TRRC should be permitted to construct the southernmost portion of its line over a route alternative to that already approved.

UTU also overlooks the fact that the potential impacts of the operation of the TRRC line on BNSF are necessarily minimal. As Mr. Kraemer testifies, construction of the TRRC line will not have an adverse financial impact on BNSF because: (1) much of the overhead traffic that might use the route is currently under long-term contract to BNSF; (2) if BNSF operates the line, diversions will be a "non-issue" or minimized; and (3) all of TRRC's traffic is naturally tributary to BNSF and therefore any revenue shortfall could be made up on other portions of the movements that BNSF would handle. Kraemer RVS at ¶ 3.

UTU's Mr. Fitzgerald expresses concern that construction of the TRRC line would reduce the viability of BNSF's routes between Huntley and Miles City and between Sheridan and Billings. See UTU Parties' Comments, Verified Statement of John D. Fitzgerald at 4 (hereafter "Fitzgerald VS"). That concern is vastly overstated. As Mr. Kraemer explains in his rebuttal verified statement, these lines are critical to non-coal trains operated by BNSF and any diversion of coal trains to TRRC "would have no appreciable impact on either of those routes' non-coal movements." Kraemer RVS at ¶ 9. In fact, BNSF has identified the need for capacity upgrades on its Sheridan-Laurel line in order to meet non-coal traffic demand. Kraemer RVS at

¶ 9. Accordingly, speculation about abandonment or downgrading of these lines is not well founded.

Finally, Mr. Fitzgerald contends that because the grades on BNSF's line east of Huntley are very favorable and allegedly superior to those on the TRRC, TRRC is somehow not a cost efficient project. See UTU Parties' Comments, Fitzgerald VS at 4. In making that argument, however, he plainly is looking at only one part of the picture. As Mr. Kraemer explains, the TRRC line will have the valuable effect of relieving capacity constraints on the BNSF lines. Kraemer RVS at ¶ 9. Moreover, the circuitry of the Huntley routing for coal destined to the Upper Midwest as compared to the more direct TRRC line offsets any grade advantage for the Huntley route. Id. at ¶ 10. Mr. Kraemer also points out that there are very unfavorable grades on the Sheridan-Huntley portion of the BNSF route, requiring the use of helper locomotives, and that the grades east of Huntley are comparable to those of the Western Alignment. Id. at ¶ 16. As TRRC witness Leilich, and BNSF officials Larry A. Parker and David J. Mahle testified in support of TRRC's Western Alignment Application, the Western Alignment offers grades that are considerably more favorable for the transport of unit coal trains than the Four Mile Creek Alternative.

V. JOB LOSSES

NPRC argues that TRRC's Environmental Report understated potential railroad job losses. See NPRC Response at 14-15.¹⁷ It predicts that instead of the seven lost railroad jobs projected by TRRC for the first year of operation (based on the projected creation of 80 jobs on

¹⁷ TRRC's job impact analysis is set forth at pages 4-15 through 4-18 of its Environmental Report.

the TRRC and the projected loss of 87 BNSF jobs), there could be a total of 182 job losses. Id. at 15. NPRC claims that BNSF administrative and support personnel jobs were not considered by TRRC. NPRC's arguments are misguided on several levels.

First, NPRC's job loss prediction is far off the mark. Those predictions are based on the assumption, unsupported by any evidence, that BNSF will lose administrative and support jobs at the same ratio that TRRC will create such jobs relative to new trainman jobs. This is simply not the case. As BNSF's Mr. Kraemer explains, few, if any, job losses among such BNSF personnel can be expected, since their services will continue to be required in connection with BNSF's substantial rail operations in Montana -- operations that will not be affected by TRRC. Kraemer RVS at ¶ 14. By contrast, TRRC will be a new enterprise that will need to hire administrative and support personnel to handle a variety of tasks. NPRC's application of the ratio of TRRC hiring of administrative/support to train crew personnel to the BNSF situation is simply not valid. See Kraemer RVS at ¶¶ 11-14.

NPRC also overlooks the fact that TRRC's analysis of projected first year job losses is in fact overstated in the long-term because it does not account for the fact that train crew jobs will increase over time as TRRC tonnage grows -- i.e., as new mines are developed. See Environmental Report at 4-18. Moreover, the TRRC job impact analysis was limited to railroad jobs and expressly does not take into account the fact that significant job opportunities will be created at mines as they are developed. Id. Thus, NPRC's attempt to use TRRC's first year railroad job impact analysis in arguing that the Application should be denied based on job losses is simply not sustainable. In fact, construction of the TRRC line represents the best opportunity to bring jobs and economic development to an area of Montana that suffers from a lack of both today. See Kraemer RVS at ¶¶ 12, 14; letters of support in Appendices B, C and D. That not

only is in the public interest but also accounts for the broad political and community support for the Application.¹⁸

Moreover, UTU argues that BNSF employees at Sheridan, WY and Forsythe, MT will suffer as a result of the diversions that UTU predicts will occur from BNSF's line to TRRC. See UTU Parties' Comments, Fitzgerald VS at 5. As Mr. Kraemer explains, UTU's concerns about diversions are overstated. Kraemer RVS at ¶¶ 3, 12. To the extent that there might be a potential reduction in BNSF jobs, it would be among the ranks of the personnel required to operate trains on the BNSF line that will experience a diversion of traffic to the TRRC line. These are the employees that were counted in the TRRC employment analysis. See Application, Environmental Report at 4-17. In any event, BNSF has already entered into labor protective agreements with UTU and with the Brotherhood of Locomotive Engineers to address any such impacts that might occur. See Rebuttal Verified Statement of Milton H. Siegele, Jr. ("Siegele RVS"). As Mr. Siegele and the attachments to his statement demonstrate, the agreements already reached with these unions offer substantial labor protection addressing any concerns that might arise from construction of the TRRC. Further, Mr. Kraemer explains that the employment outlook for rail labor, and employment in the relevant area of Montana, will be much bleaker if NPRB compliance coal is not developed. Kraemer RVS at ¶ 11. The TRRC project is essential to the development of these resources, and the accompanying jobs.

In any event, job impact issues have been addressed in the environmental documents prepared by the ICC and Board in the TRRC I and TRRC II proceedings. To the

¹⁸ See 56 letters of support assembled in Appendices B, C and D.

extent this Application implicates new employment issues, those impacts are most appropriately addressed in the SEIS that will be prepared in this proceeding.

Finally, the UTU Parties contend that the Board has authority to impose conditions for adversely affected railroad employees under the former 49 U.S.C. § 10901(e). See UTU Parties' Comments at 9-10. The UTU Parties ignore the fact that the ICCTA repealed that provision. In revising the statute, Congress specifically excluded "labor protection conditions" from those available in railroad construction and operation cases. See 49 U.S.C. § 10901(c). Consistent with that clear statutory change, the Board has declined to "exercise the authority to impose discretionary labor protection on the construction of lines because that function was not retained by the [ICCTA]." Class Exemption for the Construction of Connecting Track under 49 U.S.C. 10901, et seq., Ex Parte Nos. 392 (Sub-No. 2) and (Sub-No. 3), 1 S.T.B. 75, 85 (1996). Since the ICCTA "savings provision" has no applicability here, the Board no longer has authority to grant the employee protective conditions UTU requests.¹⁹

¹⁹ Even if the prior statutory language in 49 U.S.C. § 10901(e) applied here, the Board and its predecessor have consistently declined to grant labor conditions to employees of non-applicant railroads who may be affected by the proceeding. See, e.g., Big Stone -- Grant Industrial Development and Transportation, L.L.C. -- Construction Exemption -- Ortonville, MN and Big Stone City, SD, Finance Docket No. 32645 (not printed) (served Sept. 26, 1995) at 3; Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -- Control -- Missouri-Kansas-Texas Railroad Company et al., 4 I.C.C.2d 409, 513 (1988); Union Pacific Corporation, Pacific Rail System, Inc. and Union Pacific Railroad Company -- Control -- Missouri Pacific Corporation and Missouri Pacific Railroad Company, 366 I.C.C. 462, 621 (1982); CSX Corporation -- Control -- Chessie System, Inc. and Seaboard Coast Line Industries, Inc., 363 I.C.C. 521, 590-91 (1980). Since TRRC -- the sole applicant here -- has no employees, there simply are no individuals to whom such conditions might apply.

VI. DESIGN ISSUES

Mr. Fix raises several design issues in his comments. He claims to have found a design flaw in the Western Alignment that would either prevent or make more costly the hauling of return freight on TRRC. See Fix Comments at 3 and 4. He focuses on two statements in the Verified Statement of Daniel R. Hadley submitted with the Application: (1) that helper units will be needed to assist trains departing from the Spring Creek Mine; and (2) that a design criterion for the TRRC is a maximum grade against empties of 1% compensated for curvature. See Verified Statement of Daniel R. Hadley at 3 (“Hadley VS”) (April 1998 Application, Appendix A). According to Mr. Fix, those statements show that TRRC can only haul freight one way without the use of helper units. Mr. Fix contends that TRRC cannot be a common carrier if it is designed only to carry coal in one direction. However, the Application states at 7 that commodities other than coal may be transported on the Tongue River Railroad. Alternatively, Mr. Fix claims that if helper units are used, an analysis is needed regarding the extra fuel they would consume.

Mr. Fix’s argument is based on a misinterpretation of the facts. TRRC is designed to operate with loaded trains in both directions without helper units. Helper units are needed on the Spring Creek Mine spur near Decker because the existing trackage on the spur between the mine loadouts and the proposed TRRC exceed 1.1 percent. See Rebuttal Verified Statement of Daniel R. Hadley at 4 (“Hadley RVS”) (Appendix A to this Reply). Once the loaded trains reach TRRC, no helper units are required, as grades from Miles City to Decker do not exceed 1 percent. Id. Coal trains are the heaviest traffic that will move on TRRC. Therefore, if the coal trains can move without helper units, any other type of common carrier freight will move easily in either direction on TRRC without helper units.

Mr. Fix also takes issue with Mr. Hadley's statement regarding the surface area that would be disturbed by the Western Alignment. See Fix Comments at 4. He assumes that if the Western Alignment involves a high amount of bedrock, there will be an increase in surface area disturbed. He also incorrectly states that Mr. Hadley made conflicting statements regarding the slope that will be used where bedrock is encountered.

However, Mr. Hadley's April 1998 statement clearly explains that "where the cuts will be through bedrock material, a cut/slope ratio of 1H:1V will be used regardless of the ground slope." See Hadley VS at 4. Moreover, the more bedrock that is encountered, the less surface area will be disturbed because TRRC will be able to use steeper slopes for portions of the alignment that traverse bedrock. See Hadley RVS at 5-6. A "steeper" 1 to 1 slope creates less, not more, land disturbance than a "flatter" 2 to 1 due to the greater length of the flatter slope. Id.

Mr. Fix also questions the design of culverts. See Fix Comments at 4. He notes Mr. Hadley's April 1998 testimony on the design parameters for the ten and twenty-five year peak flows (see Hadley VS at 5) and questions whether culverts also should be designed to address the fifty-year or hundred-year flood flows. Mr. Fix also expresses concern that creeks may wash out the railroad grade during storms.

The hydrologic design for TRRC is in accordance with railroad design standards and considers the integrity of the constructed rail embankment during fifty and hundred year flood events as well as ten and twenty-five year flood events. See Hadley VS at 5. TRRC is designed so that water from a hundred-year flood event would not overtop the track. See Hadley RVS at 6-7. In some places there may be a short-term backup of water in the drainage area in fifty or one hundred year flood events. However, it is anticipated that the water would drain down to normal stream elevations within a matter of hours. See Hadley RVS at 7.

Mr. Fix takes issue with the size of the vehicle underpasses described by Mr. Hadley, claiming that the 12' by 12' size is inconsistent with the Montana legal requirements of 13' 6". See Fix Comments at 4. However, the corrugated metal arch underpasses referred to in Mr. Hadley's April 1998 statement are private underpasses for ranchers. See Hadley VS at 6. Where TRRC will bridge over a public right-of-way, the Montana Department of State Highways specifications will be met. See Hadley RVS at 7.

Mr. Fix also questions Mr. Hadley's reference to yard track. See Fix Comments at 4 (refers to Hadley VS at 7, 8). However, the proposed yard track would allow for the staging of trains entering and exiting the main BNSF line at Miles City, which is not on the Western Alignment and thus is not part of this proceeding. The Western Alignment would have one passing siding near the connection with the Spring Creek Spur, which would be approximately 8,500 feet long, and a shorter set out track of approximately 550 feet. See Hadley VS at 7.

VII. ALLEGED HARM TO RANCHERS

Several parties claim that the Application is not in the public interest because ranchers along the Western Alignment right-of-way will be harmed by its construction. It is worth noting that not all Montana ranchers oppose the Application. In fact, the letters in Appendix C demonstrate that numerous ranchers strongly support the Tongue River Railroad project. For example, Marjorie Knobloch, a rancher whose land would be crossed by the Tongue River Railroad, writes:

As far as the railroad goes, I say let her come. We would appreciate anything that would help the economy of our area. We have been looking forward to a coal mine since this part of the country was leased for coal. Jobs provided by the mining would

certainly give our children the opportunity to stay in this area and all grandmas like having [their] grandchildren close enough to hug.

October 25, 1998 Letter from Marjorie Knobloch. See also October 25, 1998 Letter from Dave and Pat Gardner at 2, ranchers in the Otter Creek area ("The economy of our region and our State will be positively impacted with the construction of this railroad. The power consumers of the Midwest will benefit with cleaner power generation. . . [T]he legitimate concerns of the impacted landowners will be addressed through the right-of-way acquisition process . . ."); October 22, 1998 Letter from Jay Nance at 1, cattle rancher on the Tongue River ("Things are not economically or socially well in our neck of the woods. The development of the . . . TRR would be the catalyst for economic development and positive change in this area."). These letters are contained in Appendix C.

The comments alleging harm to ranchers fall into four categories: (1) objections to TRRC obtaining a fee simple interest in the right-of-way; (2) objections to the compensation offered by the TRRC; (3) claims that delay of the railroad has adversely affected ranchers' ability to make decisions on improvements; and (4) claims that the right-of-way will separate livestock from water sources and that TRRC's livestock passes will not work.

First, several commenters object to TRRC acquiring a fee simple interest in the right-of-way rather than an easement.²⁰ For example, Mr. Fix expresses concern that TRRC plans to use right-of-way interests as collateral for financing the railroad, and contends it will not be able to do so because he and others refuse to sell their land. Fix Comments at 3. He contends

²⁰ Donald Bice, Mark Fix and Mr. Fix's Lower Tongue River Protection Association raise this issue.

that private landowners will only grant TRRC easements under which they will be paid a royalty for railroad use. See id.²¹

Mr. Fix's arguments regarding the right-of-way and its potential use as collateral are based on erroneous assumptions and in any event have no merit. To begin with, whether TRRC obtains any given right-of-way parcel in fee or by easement is a matter for negotiation or, failing agreement, condemnation proceedings under applicable state law. The same is true for the landowner's compensation; if it cannot be agreed upon, it will be based on Montana law, which generally provides for lump sum compensation based on the fair market value of the condemned property interest. See Mont. Code Ann. § 70-30-302 (1997).²²

In negotiations with private landowners along its route, TRRC intends to acquire a fee simple interest. See Rebuttal Verified Statement of Edward F. Waldhauser at 3 (hereafter "Waldhauser RVS") (Appendix A to this Reply). As Mr. Waldhauser explains, it is not uncommon in Montana to acquire a full fee interest to a right-of-way if the landowner is losing the right to use the surface of the property in question, as will be the case here. Id. That is because absent a sale in fee, the landowner would continue to be subject to property taxes even

²¹ Mr. Fix apparently opposes TRRC obtaining the right-of-way in fee because he hopes to be paid a "royalty" for each rail car passing over his land; wants to profit from the grant of any easements that may become possible after TRRC has assembled this property; and in the event TRRC ceases to operate at some future date does not want to have to negotiate with lenders to reacquire any parcel transferred to TRRC or have that property railbanked and used by "hikers and bikers." See Fix Comments at 3; LTRPA Comments at 1; Fix Comments on Environmental Report at 2-3. None of those objectives could justify Board interference with either private negotiations or state law proceedings for the acquisition of TRRC's right-of-way.

²² Mr. Fix's request for "royalty" compensation -- which would transform every land owner along a new railroad right-of-way into the equivalent of a feudal baron with a toll chain across the Rhine -- is not a matter within the Board's jurisdiction, and is neither required by nor appropriate under Montana law.

though it could not use the property's surface. Id. In the event that some of the private landowners are unwilling to reach such an agreement, however, TRRC will initiate state court condemnation proceedings. If that occurs, the Montana courts will determine the nature and value of the right-of-way interest that TRRC may acquire through condemnation. See Mont. Code Ann. § 70-30-104 (1997) (classifying estates and rights in land that may be taken for public use). Mr. Fix has failed to show that there is any valid basis for the Board to interfere with either the private negotiation process or potential state condemnation proceedings.

More important, Mr. Fix plainly errs in suggesting that TRRC's financing is dependent on having fee right-of-way land to use as collateral. In fact, as the Application states:

TRRC presently plans to finance the construction of the proposed railroad by: (1) raising partners' capital from the existing partners in the approximate amount of \$105,000,000; and (2) the private placement of long term debt secured by plant, property and contracts for the movement of coal by the railroad.

Application at 23. While securing a right-of-way is critical to any railroad, the value of that right-of-way may play at best a minor role in the railroad's financing. Indeed, the right-of-way is only one, relatively small component of the security TRRC anticipates granting lenders. As Mr. Cox of Chase Securities, Inc., explained in his April 1998 verified statement:

The security provided to potential lenders to TRRC will include, but not be limited to, a mortgage on the assets of the TRRC, the assignment of all contracts of TRRC, including any trackage rights agreements or contracts with utilities, and a pledge of revenues of the TRR.

Verified Statement of Francis M. Cox III at 6 (Application, Appendix A). TRRC's income producing contracts and a pledge of its revenues will obviously be the primary elements of the

lenders' security. The independent real estate value of a ribbon of right-of-way -- even if all held in fee -- obviously adds little.²³

Second, objections to the right-of-way compensation fail to recognize the objective nature of the process.²⁴ All compensation offers will be based on independent appraisals and third party reviews. See Waldhauser RVS at 3-4. At the time of purchase, the landowner will be given a written offer and summary statement showing the appraised value of the right-of-way land and current sales in the surrounding area. Id. at 4. This procedure demonstrates that TRRC is offering fair compensation for its right-of-way. Moreover, if the landowner and TRRC cannot reach agreement, a Montana court will decide the compensation. See Mont. Code Ann. § 70-30-301 (1997) (commissioners to determine the current fair market value of property sought to be appropriated and all improvements thereon).

In addition, there is no indication that the proposed right-of-way has reduced the value of the land.²⁵ Land in the vicinity of the right-of-way has been the subject of recent sales. Such land has sold for prices consistent with those of similar land that is not affected by the right-of-way. See Waldhauser RVS at 5.

²³ Even if all of TRRC's right-of-way consisted of easements as Mr. Fix prefers, that right-of-way could still serve as collateral for the financing. The Board's predecessor had extensive experience with such matters in evaluating the issuance of securities and assumption of obligations by railroads under former section 11301 of the Act. Railroad rights of way, which almost inevitably consist in some measure of easements, routinely served as part of the security for lenders provided by mortgages and other security arrangements.

²⁴ Donald Bice, Pat Corley (Montpress), Nick Golder, John Reynolds, Farwell Smith and Bob Thaden raise this issue.

²⁵ Donald Bice and Nick Golder raise this issue.

Third, some parties claim that the TRRC project has delayed them from making long term decisions regarding such things as irrigation systems and fencing.²⁶ However, this is not an appropriate basis for delay. As Mr. Waldhauser states at page 3 of his statement, the land appraisals take into account such improvements. Agents for TRRC have told landowners in negotiations that they should point out all improvements to the appraiser because the appraiser will address site improvements and economic access to the land individually for each landowner. See Waldhauser RVS at 4.

Fourth, commenters have expressed concern that TRRC will cut off pasture(s) from water and that proposed cattle passes will not work.²⁷ While there will clearly be some instances where the right-of-way will separate pasture from the river or other water sources, TRRC has made provisions to assure the access to water. For example, if the Western Alignment would cause a livestock water source to be on the other side of the right-of-way from the pasture land it serves, TRRC could re-establish a water source for the part of the pasture that is separated from the livestock water source by piping, creating a new water source or providing different access. Id. In addition, where appropriate, TRRC will install private at-grade crossings to accommodate oversized equipment that cannot use the underpass. See Hadley RVS at 2. TRRC's agents have given each landowner along the right-of-way aerial photographs of the land the alignment crosses, showing the location of TRRC's proposed livestock underpasses and at-grade crossings, and have told the landowners that TRRC will work with them on the location of

²⁶ Nick Golder, Donald Bice, Andrea Knutson, Musgrave Ranch, Bob Thaden and Steven Valentine raise this issue.

²⁷ Nick Golder, Musgrave Ranch, Alice Orr and Alan Rolston raise this issue.

the underpasses and at-grade crossings consistent with the railroad's safety and design parameters. See Waldhauser RVS at 5. To encourage livestock to use the underpasses, TRRC will work to place the underpasses at the notch point where the cut and fill meet, thus reducing the underpass's length. See Hadley RVS at 2. TRRC will follow existing livestock trails as closely as possible and will, if necessary, grade the trail to the underpass to facilitate livestock movement. See Hadley RVS at 3.

VIII. SOCIOECONOMIC IMPACTS

The Northern Cheyenne and the NPRC contend that the socioeconomic impacts of the railroad have not been adequately evaluated. See Northern Cheyenne Comments at 4; NPRC Response at 15-16. This is essentially an environmental issue that will be addressed, to the extent appropriate, as part of the SEIS process. Indeed, the Northern Cheyenne comments consist primarily of a re-submission of their comments on the SEIS scoping notice. TRRC responded to these comments on September 8, 1998 and will not repeat that response.

Nevertheless, one point warrants noting here. The Northern Cheyenne claim there were deficiencies in the socioeconomic impact analyses in the TRRC I and TRRC II environmental impact statements. See Comments on the Scope of the Surface Transportation Board's Proposed EIS Supplement, Attachment to Northern Cheyenne Comments at pp. 12-19 (hereafter "EIS Supplemental Comments"). The time for criticizing the prior EIS's is, of course, long past. In any event, the Northern Cheyenne's criticisms are without merit. The analysis set forth in the TRRC II EIS is tied to the June 1989 Draft Powder River I Supplemental EIS prepared by the BLM, which the Northern Cheyenne themselves recognize as the most adequate analysis of impacts on the Northern Cheyenne to date. See EIS Supplemental Comments at 10.

In addition, the ICC retained Ethnoscience, a consulting group the Northern Cheyenne themselves characterize as respected and independent, to consult on Native American issues for the environmental analysis of the TRRC extension. Substantial portions of the environmental documentation prepared in TRRC II were devoted to describing the Northern Cheyenne and Crow reservations, as well as analyzing the socioeconomic impacts of the TRRC line on the Northern Cheyenne and the Crow. See 1992 DEIS at 2-33 through 2-41, 4-102 through 115, and 5-6.

Moreover, the environmental documents prepared in connection with the TRRC II proceeding addressed socioeconomic impacts on the Northern Cheyenne and the Crow along the entire Miles City to Decker line, not just the extension considered in this proceeding. See 1992 DEIS at 2-33 to 2-41, 4-104 to 4-123. Thus, the Northern Cheyenne claim of deficiencies in the 1985 EIS is moot. In addition, TRRC has advised the SEA that it is prepared to enter into a Programmatic Agreement ("PA") for the entire line with the Advisory Council on Historic Preservation, the Montana State Historic Preservation Office, BLM, the Northern Cheyenne Tribe and the Board based on the 1996 PA drafted with respect to the Ashland-Decker extension. See September 8, 1998 TRRC Reply at 29. TRRC thus contemplates that tribal consultation will occur with respect to cultural resource identification for the entire line, as the negotiated PA relating to cultural resources provides for such consultation.

IX. MISCELLANEOUS ISSUES

This section provides TRRC's response to several miscellaneous issues raised by various parties.

A. There is plainly no need for an oral hearing, as the UTU Parties request. See UTU Parties' Comments at 10. Given the degree to which TRRC's rail lines have been scrutinized in the proceedings on its prior applications (which, in both circumstances, included several days of public hearings in Montana and Wyoming), further hearings on the limited application here involved would serve no useful purpose. The instant Application only seeks authority to construct and operate a 17-mile line of railroad as an alternative to a route authorized by the Board in TRRC II. The Board has provided for participation by interested parties through the submission of written comments and evidence (see Tongue River Railroad Company -- Rail Construction and Operation -- In Rosebud and Big Horn Counties, Montana, Finance Docket No. 30186 (Sub-No. 3) (not printed) (served June 23, 1998) at 2), and that is sufficient to satisfy all due process requirements.

B. Mr. Fix's comments regarding the lack of a permitted mine in the Otter Creek spur is not germane to this Application, since the Otter Creek spur is not part of the Western Alignment. See Fix Comments at 1; LTRPA Comments at 1. LTRPA's statement that "the whole TRR route needs to be reviewed" is similarly beyond the proper scope of comments here, which should pertain solely to the pending Application. See LTRPA Comments at 1. Moreover, the Board and its predecessor reviewed and approved the balance of the proposed route in TRRC I and TRRC II.

C. LTRPA objects to the Application on the grounds that (a) TRRC may not itself operate the line and (b) the Application should not have been submitted until the operator of the line was known. LTRPA Comments at 1. This comment is premature because TRRC may operate the line. However, even if TRRC does not, the Board and its predecessor have "a well-established policy of granting requests for authority to construct rail lines where the constructing

entity would not operate the line.” Big Stone -- Grant Industrial Development and Transportation, L.L.C. -- Construction Exemption -- Ortonville, MN and Big Stone City, SD, Finance Docket No. 32645 (not printed) (served Sept. 26, 1995) at 2. In such cases, the constructing entity “holds itself out to fulfill the common carrier obligation that attaches to the line.” Id. Similar applications have been granted when the operating carrier had not yet been determined. See Southern Electric Railroad Company -- Construction Exemption -- Jefferson County, AL, Finance Docket No. 31972 (not printed) (served Mar. 17, 1992) at 2.

D. Mr. Fix also asks when TRRC expects to have its line built. Fix Comments at 1. This question was answered in the Application. TRRC stated that it expects to complete construction of the entire railroad by late 2001 or early 2002. See Application at 20. Thus, the construction should occur before the opening of the new Montana compliance coal mines to be served by the railroad. Based upon his many years of experience in developing Montana coal mining projects and in the Powder River Basin, Mr. Gustafson, President of Wesco Resources, has testified that new Montana compliance coal could begin modest production levels by 2002. See Verified Statement of Mike Gustafson at 5 (April 1998 Application, Appendix A).

E. Mr. Fix argues that the Tongue River Railroad will not help to develop Montana coal but will merely serve BNSF and the Wyoming mines. Fix Comments at 2. The Board has already rejected this argument in TRRC II. Further, the statements submitted in this proceeding by Messrs. McMahan and Leshock of RDI, among others, demonstrate that the Tongue River Railroad will assist in the development of Montana compliance coal.

F. Mr. Fix and LTRPA also attempt to make an issue of TRRC’s statement that the terms of the debt for financing construction costs will depend on market conditions at the time of issuance. They suggest that if the stock market is an indicator of “market conditions” then

TRRC may not get a loan for a long time. See Fix Comments at 3; LTRPA Comments at 2. Here again, their comments are simply off the mark. TRRC has never said it contemplates a public offering of equity to finance its construction. Rather, TRRC plans to finance the construction with debt and additional capital from its existing partners, neither of which requires recourse to the equity markets. See Application at 24.²⁸

G. LTRPA also suggests that public convenience and necessity has not been shown because the rail line will only haul traffic in one direction and not haul "useful products" back to Wyoming and Montana. LTRPA Comments at 1. However, satisfaction of the public convenience and necessity standard has never depended upon the existence of two-way hauls; indeed, if it had, the principal rail line in the Powder River Basin (known as the "Joint Line") would never have been approved. Moreover, public convenience and necessity is not determined solely with respect to local interests surrounding the proposed rail line, but by broader public interests. The Board and its predecessor have already found that the TRRC line as a whole serves the public convenience and necessity.

H. Mr. Fix notes that pages 1 and 11 of Exhibit D to the Application (the Operating Plan) states that TRRC may place a terminal facility on property that Mr. Fix describes as "Fort Keogh," which is better known as the Fort Keogh Livestock and Range Station ("LARS"), a U.S. Department of Agriculture facility. See Fix Comments at 3. He also notes that, according to page 12 of Exhibit D, office facilities planned by TRRC may be located on this same property or on a Fish Hatchery southwest of Miles City, as might the equipment laydown area described at

²⁸ Because interest rates -- which are far more important than stocks as an indicator of market conditions for debt financing -- have recently declined, market conditions for potential TRRC debt have actually improved. In any event, Mr. Fix and LTRPA focus only on the market decline of August-September 1998, not longer term market trends.

page 3-5 of the Environmental Report. He raises an issue as to access to this property and states that the environmental impacts of these actions will need to be investigated further. Mr. Fix's concerns are, again, beyond the scope of this proceeding, as they have nothing to do with the Western Alignment. Assuming TRRC operation of the line, TRRC plans that its unified terminal and office facility will be located on the LARS property, which is well north of the Western Alignment.²⁹ (Moreover, contrary to Mr. Fix's concerns about access to this property, TRRC already holds an easement on this property. See Appendix E, attaching excerpt from June 3, 1998 Second Supplemental Response of TRRC to Great Northern's First Set of Interrogatories, at p. 7). The location of the temporary equipment laydown area has not yet been finalized, but will not be in the vicinity of the Western Alignment.

I. Mr. Fix takes issue with Mr. Gustafson's statement concerning the advantages of the Western Alignment for the shipping public and the public as a whole. See Fix Comments at 3. Mr. Fix maintains that farmers and ranchers along the Tongue River will obtain no economic benefit, and will instead suffer economic detriment. Id. Mr. Fix does not explain what, if any, economic harm local farmers and ranchers might suffer. Indeed, some local ranchers support the Application, as the letters of support contained in Appendix C demonstrate. Moreover, the shipping public and the public as a whole includes a much broader group than local farmers and ranchers. Shippers, including but not limited to mine operators and electric utilities, will benefit from approval of the Western Alignment and the more economical coal transportation opportunities it will provide. Other shippers using the line will benefit as well. The general public, and especially persons whose electricity is generated by utilities using low-sulfur coal

²⁹ If, however, BNSF operates the line, then existing BNSF facilities would be used in lieu of the planned terminal and office facility.

from routes that include TRRC, will also benefit in the form of lower electric rates from this more efficient transportation option. Finally, landowners such as Mr. Fix will be compensated for the taking of the land along the right-of-way.

J. Mr. Fix takes issue with Mr. McMahan's statement that Montana coal is cheaper to produce than other coal because, according to Mr. Fix, it fails to recognize that Wyoming production costs are lower. Fix Comments at 3. However, as explained by Mr. Leshock, the Ashland area mines that would be served by the Tongue River Railroad have favorable stripping ratios similar to those found in Wyoming and, thus, should have comparable coal production costs. Leshock RVS at 17.

K. Mr. Fix contends that more needs to be known about power and communications lines that would have to be installed for BNSF to operate remote power switches discussed in Mr. Kraemer's verified statement. Fix Comments at 4-5. Mr. Kraemer has addressed this matter in his rebuttal verified statement. See Kraemer RVS at ¶ 15. As he explains, such power and communications lines would have to be installed whether the railroad is operated by BNSF or by TRRC, and, since such lines are placed under the roadbed, the impacts of their installation are negligible. Id.

L. Mr. Fix notes that Mr. Kraemer does not address the possibility of hauling loaded trains "back up" Tongue River, presumably meaning in a southbound direction. Fix Comments at 5. In response, Mr. Kraemer does address this possibility in his rebuttal verified statement. Kraemer RVS at ¶ 16. He notes that coal mines seldom receive inbound freight and that no local rail shippers have been identified. He also notes that there is some possibility of newly developed coal in the Ashland area moving southbound, but concludes that it is premature to speculate on the possibility or volume of such movements at this time. Id.

M. Mr. Fix questions the accuracy of BNSF official David J. Mahle's testimony that the maximum speed on the steep descending grade of the Four Mile Creek Alternative would be 20 mph, in view of the statement in the TRRC Environmental Report (at page 4-36) that speeds would be limited to 10 to 15 mph. Fix Comments at 5. As Mr. Kraemer notes in his rebuttal testimony, Mr. Mahle was addressing solely maximum speeds. Kraemer RVS at ¶ 17. Further, as Mr. Kraemer notes, actual speed would be determined by the judgment of the engineer based on a variety of conditions, and would be subject to review upon construction of the line.

N. Mr. Fix criticizes Granite Construction, the company retained by TRRC to develop the entire TRRC rail project through a design/build approach, for allegedly overrunning their budget on the Denver airport project. Fix Comments at 5; LTRPA Comments at 2. Mr. Fix is misinformed. In fact, Granite Construction did not perform any work at the new Denver international airport. See Rebuttal Verified Statement of Garry M. Higdem, Appendix A to this Reply.

O. While recognizing that a performance bond would support the TRRC project, Mr. Fix erroneously alleges that if the work is not performed the taxpayers of Montana would foot the bill. Fix Comments at 5. This is not how a performance bond works. As explained by Mr. Phillips, a regional surety manager for Federal Insurance Company, the performance bond will guarantee the performance by the contractor of all terms and conditions in the contract. See Rebuttal Verified Statement of William Phillips, Jr., Appendix A to this Reply. If the contractor defaults, the surety becomes responsible for fulfilling the terms of the contract; there is no recourse to the Montana taxpayers. Id.

P. Finally, several parties have noted that the TRRC II decision requires construction of the TRRC line to be completed within three years of the date of that decision or by November

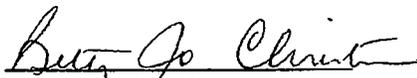
8, 1999. They urge the Board to enforce this deadline, undoubtedly recognizing that strict enforcement would effectively terminate the TRRC project. By Petition filed October 22, 1998, TRRC has requested that the Board remove the three year condition for several reasons, among them that the condition -- unprecedented in recent rail construction decisions -- provides a perverse incentive for parties opposed to the TRRC project to delay the project as long as possible.³⁰ For all of the reasons set forth in that Petition, the three year condition should not be enforced, and in fact should be eliminated.

CONCLUSION

None of the comments has come close to demonstrating that the construction of the Western Alignment would be "inconsistent with the public convenience and necessity," the burden that must be met under the statutory mandate of section 10901. None has seriously challenged TRRC's extensive evidence as to the advantages of the Western Alignment over the previously approved Four Mile Creek Alternative -- none has shown that the Western Alignment would not be more efficient to operate and maintain or the Western Alignment would not facilitate the movement of a significant amount of coal. The time has come, and gone, for arguments addressed to whether or not the TRRC project should go forward at all. The Board should expeditiously approve this Application so that TRRC may proceed to construct a line that the Board has already determined will serve the public interest.

³⁰ TRRC also noted that it had never in fact committed to build the line within three years of the date of the TRRC II decision, particularly in view of the need to satisfy the extensive environmental conditions imposed by that decision before any construction could begin.

Respectfully submitted,



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Dated: November 2, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 2d day of November, 1998 a true and correct copy of the foregoing Reply of Tongue River Railroad Company to Comments on the Application for Construction and Operation Authority for the Proposed Western Alignment was served via first class mail, postage prepaid and properly addressed, upon all parties of record in Surface Transportation Board Finance Docket No. 30186 (Sub-No. 3).


David A. Stein

APPENDIX A

APPENDIX A

VERIFIED STATEMENTS OF TRRC AND BNSF WITNESSES

Thomas G. Kraemer, The Burlington Northern and Santa Fe Railway Company (“BNSF”)

Milton H. Siegele, Jr., BNSF

J. Chris Leshock, Resource Data International

Daniel R. Hadley, Mission Engineering, Inc.

Edward F. Waldhauser, DuBray Land Services

Garry M. Higdem, Granite Construction

William Phillips, Jr., Chubb Group of Insurance Companies

KRAEMER

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 30186 (SUB NO. 3)

**TONGUE RIVER RAILROAD COMPANY --
CONSTRUCTION AND OPERATION --
IN ROSEBUD AND BIG HORN COUNTIES**

REBUTTAL VERIFIED STATEMENT OF THOMAS G. KRAEMER

1. My name is Thomas G. Kraemer, Vice President Coal and Grain Operations for The Burlington Northern and Santa Fe Railway Company ("BNSF"). My business address is 2650 Lou Menk Drive, Fort Worth, Texas 76131-2830. I am the same Thomas G. Kraemer who previously submitted a Verified Statement in the referenced docket.

2. The purpose of my statement is to address various BNSF-related comments made by rail labor and other parties opposing Tongue River's construction application pertaining to the Western Alignment.

3. The UTU and others have indicated they believe review of the transaction should focus on the financial impacts on BNSF operations, including diversions, and suggest a pro forma should be submitted by BNSF. BNSF and Tongue River have continued discussions concerning an operating agreement. A traffic study analyzing the financial impact of diversions on BNSF and any pro forma based thereon would be of little practical use in reviewing the proposed construction. Much of the traffic that might use the route is currently under long-term contract to BNSF. Second, if BNSF operates over the line as anticipated, potential "diversions" to Tongue River should be a non-issue, or at least minimized. Finally, if any such traffic is diverted over

Tongue River, cutting out BNSF for the short haul in the Basin area, it would naturally be tributary to the BNSF in any event. Thus, any shortfalls in revenue would logically be made up on the other portion of the move in which BNSF would otherwise participate. Thus, adverse revenue impacts, if any, should be negligible.

4. Labor impacts from the proposed transaction have so far been minimized, to the extent possible. In the event an operating agreement is reached with Tongue River, BNSF may be required independently to file for authority to operate over the lines of Tongue River, and labor impacts, if any, should be considered at that time. However, in anticipation of the project moving forward, we have negotiated and reached some agreements with rail labor, contingent upon executing an operating agreement with Tongue River. Those agreements are addressed in the Verified Statement of Mr. Milton H. Siegele, Jr., Assistant Vice President for BNSF's Labor Relations.

5. Rail labor recommends that a hearing be held to examine the proposed operations between BNSF and Tongue River. Further, rail labor suggests BNSF's planned operations should be thoroughly reviewed at this time. We submit that such a review or hearing would be unproductive. No operating agreement has yet been reached, although the parties are actively pursuing such an agreement. Any agreements and planned operations related thereto will not evade scrutiny as suggested. Rather, they would more appropriately be reviewed in the context of a petition to operate and/or trackage rights exemption petition, depending upon the results of the parties' negotiations.

6. Finally, without any foundation, rail labor describes Tongue River's construction application as a "scam" for BNSF. Dealings between BNSF and Tongue River have been at arm's

length. BNSF has repeatedly confirmed its intent to work out an operating agreement with Tongue River, but has never intended to be a key participant in the construction project. BNSF has no control over or participation in the funding, no direct or indirect affiliation with Tongue River or its officers and directors, and no influence over Tongue River's project (other than arm's length bargaining leverage, as appropriate).

7. As previously explained, BNSF's participation in the construction phase has been limited to non-monetary advisory assistance to Tongue River, including in-house engineering expertise. We have consulted with Tongue River on various engineering matters in order to facilitate the project, in the event BNSF is able to reach a satisfactory agreement with Tongue River. We continue to support Tongue River's project, particularly insofar as it presents an opportunity to develop new markets. However, BNSF's support is only that and does not rise to a level of joint participation in the construction. Logically, if Tongue River were acting on behalf of BNSF, the execution of an operating agreement would easily and quickly have been accomplished long ago as part of the purported scheme. In contrast, arms' length bargaining has made negotiations complex and lengthy.

8. Finally, depending upon the arrangements ultimately negotiated, BNSF will duly seek any authority required by law. If, in fact, BNSF will need to seek operating authority independent of Tongue River's, such will be done in due course. If however, a trackage rights exemption will be sufficient pursuant to applicable laws and regulations, such action will be taken -- again, depending upon the nature of the arrangements to be finalized.

9. Mr. John D. Fitzgerald questions whether BNSF operation of the line would result in impairment of the viability of BNSF's operations over the route between Huntley and Miles

City and the route between Sheridan and Billings. The re-route of some of BNSF's unit coal trains over the Tongue River route would have no appreciable impact on either of those routes' non-coal movements. For example, today approximately four intermodal trains and two grain through trains per day traverse the Sheridan to Huntley route and about four merchandise trains move over the Huntley to Miles City route. The Billings-Huntley-Forsyth-Miles City line is a critical artery to move grain from the Dakotas via Great Falls or interchange with Montana Rail Link. Speculation about the potential for downgrading abandonment or spin-off of either of these two key routes is unfounded. To the contrary, the re-route of coal trains moving to the Upper Midwest would free up much needed capacity on these routes. BNSF has been particularly concerned about the need for substantial capital commitments required for capacity upgrades of the route between Sheridan and Laurel in order to service non-coal transportation demands.

10. Mr. Fitzgerald also opines that "the BNSF line east of Huntley has very favorable grades, certainly superior to those for the proposed TRRC, such that I question the overall cost efficiency for BNSF to operate both lines." As indicated relieving capacity constraints on BNSF's current routes is a very important consideration for us. As for heavy-haul coal traffic traversing the current routes, reroute over Tongue River of some of that traffic moving to the Upper Midwest would, in fact, be advantageous to BNSF from a cost perspective. Although BNSF's line east of Huntley does indeed have favorable grades, that benefit is offset by the circuitry of the routing for Upper Midwest through coal trains and the very unfavorable grades on the Sheridan to Huntley portion of the route, which grades require helper service. Moreover, the grades east of Huntley are comparable to the favorable grades on the Tongue River's Western Alignment route,

the majority of which is a downhill run for extremely heavy loaded coal trains headed northward to Miles City.

11. Employees of BNSF have concerns about reductions in employment in the Sheridan area in particular. The reality of declining opportunities for railroad workers operating coal trains in Montana should be, if anything, ameliorated by the proposed institution of service along the Tongue River route. It is widely known that Montana's current PRB mines are projected to face some very tough times in the not too distant future. See, e.g., Montana Coal 1998, prepared by Montana Coal Council; Coal Market Potential and Regional Competitiveness Study Selected Coal Fields of Montana, January 1996, prepared for Montana Department of Commerce by Stagg Engineering Services, Inc. Much of Montana's current production is not compliant with Phase II of the Clean Air Act's sulfur emission reduction standards which will become effective in the year 2000. Revenues on non-compliant coal will be discounted and at the mercy of niche markets for very costly blended or scrubbed coal. In addition some of the Montana PRB mines are facing declining reserves of accessible and cost-efficient coal. Many of these mines have been in production for decades and their ability to remain competitive with newer reserves will be significantly challenged. The bleak outlook for mine production in Montana will not be without consequences to BNSF and its workers. For these reasons, BNSF has developed a keen interest in Tongue River's ability to reach new Phase II compliance coal reserves in Montana. Critical to sustaining coal and rail-related job opportunities in Montana in the long run is the exploitation of and transportation access to new source coal.

12. The fairly limited impacts of re-routing a small universe of through trains moving to the Upper Midwest (approximately eight -- four empty, four loaded) will be a mere drop in the

bucket if opportunities for new mine production in Montana are not developed soon. Mine closures and lack of new source coal will eventually result in loss of jobs and tax revenues and other downstream impacts upon the communities of Montana. While not a panacea, Tongue River's project poses the opportunity to develop a new source of readily available, more cost efficient, Phase II compliant coal, along with the attendant jobs and tax revenues.

13. As indicated, the proposed construction and potential for re-routing some overhead traffic over Tongue River may have a limited impact on BNSF train and engine crews which operate today. However, we believe any decline in job opportunities for serving existing markets in Montana will clearly be offset by rapidly increasing opportunities in the southern PRB as well as new opportunities created by the Tongue River project. Nevertheless, to the extent possible at this stage, we have attempted to address such impacts in the labor agreements discussed in Mr. Siegele's Verified Statement.

14. Northern Plains Resource Council ("NPRC") has criticized Tongue River's analysis of job loss impacts for administrative and support personnel. NPRC points out that Tongue River has projected numbers of new jobs for administrative support, but no corresponding job loss has been calculated for BNSF. Thus, it implies the number of jobs created for this category is inflated. Logically, BNSF's overhead support personnel in Montana and Wyoming are already available to support BNSF's existing infrastructure. Incremental gains or shifts in BNSF's traffic mix in the region resulting from creation of the Tongue River route should have no appreciable impacts on BNSF's general administrative personnel. In contrast, Tongue River will be creating a new enterprise for itself in the region and will logically need to employ administrative and support staff.

15. Various other opponents have claimed that environmental review of the construction project should be delayed pending completion of negotiations for operation of the line. To the extent possible the parties have provided as much information concerning the proposed operation as possible. Conclusion of negotiations over an operating agreement would likely not have any significant impact on the information provided for environmental review purposes. For instance, Mr. Fix alleges that the installation of power and communications needed for any remote power switches to be operated by BNSF from Fort Worth should be addressed. Power and communications devices will likely be a part of any operation, regardless of the identity of the operator or whether the communications systems are remotely located. Moreover, the environmental impacts of installing power and communications devices are generally negligible because these necessitate very low voltage lines which are usually installed under the right-of-way. Disturbance of the right-of-way will occur from the construction in any event, and the installation of power and communications devices is usually done in tandem with other sub-grade projects. The potential for disruption of power lines (for example, from excavation projects) is minimized since the lines are laid in the right-of-way.

16. Mr. Fix also points out that BNSF has not addressed any impacts of hauling loads "back up" Tongue River, presumably meaning loads heading uphill, or southward. As a practical matter, whether a haul is loaded or empty should have little bearing on the analysis of environmental impacts. Nevertheless, as indicated in my previous statement, the Tongue River route would be used primarily as a means to reach new coal markets. Coal mines seldom, if ever, receive inbound freight, and we have identified no other potential local rail shippers in the area at this time. Secondly, BNSF would use the line to re-route some of its overhead coal traffic for

which loaded trains would be heading northbound to the reach markets in the Upper Midwest. There is a possibility that newly developed coal in the Ashland area would move southward; however, the location of markets for that coal and the number of loaded trains headed southward will be dictated by the economics of the coal supply, the forces of supply and demand, and operating costs over the route. Accordingly, southbound loaded coal traffic from new sources in the Ashland area has not been quantified at this time.

17. In addition, Mr. Fix notes concern over the proposed speed limits outlined by BNSF and Tongue River. Mr. Mahle identified a maximum train speed of 20 mph and Tongue River identified 10-15 mph for the descending grade of Four Mile Creek. I understand Mr. Mahle's statement defines the maximum speed only. Should the operations warrant reductions to 10 and/or 15 mph in certain areas, at the discretion of the engineer, or based upon weather or other operating conditions, or upon further review when the line is built and put into operation, such a decrease may well be warranted. However, at this stage, our engineers believe the outer limits for train speed at such places should be 20 mph, and that estimate is thus not necessarily inconsistent with Tongue River's planned operations as described.

Verification

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

Dated this 30th day of October, 1998.



Thomas G. Kraemer

SIEGEL, JR.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 30186 (SUB No. 3)

**TONGUE RIVER RAILROAD COMPANY –
CONSTRUCTION AND OPERATION –
IN ROSEBUD AND BIG HORN COUNTIES**

**REBUTTAL VERIFIED STATEMENT OF
MILTON H. SIEGELE, JR.**

1. My name is Milton H. Siegele, Jr. I am Assistant Vice President for Labor Relations for The Burlington Northern and Santa Fe Railway Company (“BNSF”). My office address is 2650 Lou Menk Drive, Fort Worth, Texas 76131-2830. I have been in the Labor Relations Department for BNSF or its predecessor, The Atchison, Topeka and Santa Fe Railway Company (“ATSF”), since 1984. I make this verified statement based on personal knowledge, review of corporate documents or other business records, review of certain verified statements filed in this proceeding, and review of correspondence which is kept in the regular course of business.

2. As Assistant Vice President, Labor Relations, I have primary responsibility for the so-called operating crafts and the representatives for employees who are actually involved in the movement of freight trains. Specifically, I conduct labor relations with the Brotherhood of Locomotive Engineers (“BLE”) and the United Transportation Union (“UTU”). In the summer of 1998, I was advised that a business entity known as the Tongue River Railroad (“TRR”) had obtained authority to construct a new rail line between Decker, Montana, and Miles City, Montana and was seeking an alternate route for a portion of the line. Based on conversations with various individuals from the Coal Marketing Business Unit, including Tom Kraemer, it is my understanding

that there were new opportunities for business along this proposed line and that BNSF could benefit from access to those facilities. Pursuant to that request, myself and John Waldron, a director of Labor Relations who reports to me, and I commenced the process of discussions and negotiations with the UTU and BLE. The purpose of these discussions and negotiations was to arrive at a labor agreement that would allow for the effective use of resources and provide for the protection of employees in the event that the TRR was constructed and in the event that an operating agreement or trackage rights agreement was reached between BNSF and the TRR.

3. The initial agreement was reached between BNSF and the UTU on June 16, 1998 and a copy is attached as Exhibit No. 1. This agreement allowed for interdivisional or interseniority service between BNSF terminals in Decker, Montana and Glendive, Montana. Representing UTU in these proceedings were Carl Valdick, General Chairman with the UTU with offices in Springfield, Missouri, and Ken Mason, the General Chairman of the UTU with offices in Arvada, Colorado. Also participating in the negotiations was UTU international President, Rick Marceau.

4. On September 23, 1998, another interdivisional or interseniority service agreement was reached with BLE (copy attached as Exhibit No. 2). Representing BLE in those negotiations was M. W. Geiger, Jr., a General Chairman of the BLE with principal offices in St. Paul, Minnesota.

5. In the absence of the Memoranda of Agreement concerning the Decker/Glendive coal pools for both BLE and UTU, Decker, Montana and Glendive, Montana would be on two separate crew seniority districts. That is, in the absence of an agreement, it would be extremely difficult for BNSF to operate effectively between

Glendive and Miles City, Montana. Employees from Glendive could not operate train service to Decker or vice versa. The Agreements with UTU and BLE provide for freight pools to be established at both Decker and Glendive to handle traffic in each direction. The agreements provide that the former Chicago, Burlington and Quincy schedule agreement, as amended by various national agreements, will apply to this service.

6. I have reviewed the Verified Statement of UTU General Chairman John Fitzgerald as well as the Verified Statement of Local Chairman R. S. Knudsen and other Union represented employees who have filed comments opposing the Tongue River Railroad's construction application. Generally, these comments concern the economic conditions or the perceived harm to the employees based out of Sheridan, Wyoming or Forsythe, Montana by virtue of contemplated transactions with the TRR. These verified statements do not take into consideration the protective conditions negotiated with BLE and UTU. At this time, any adverse impacts sustained by employees in Sheridan or Forsythe are purely conjectural. However, in my opinion, the negotiated Memoranda of Agreement with both the UTU and BLE address these concerns about the potential adverse consequences to employees.

7. Side letter No. 1 to the UTU memorandum of agreement, which is included as part of Exhibit No. 1, expressly states that Article 13 of the 1972 Master Interdivisional Agreement applies to any employee adversely affected at either Sheridan, Wyoming or Forsythe, Montana. Attached as Exhibit 3 is Article 13 of that Agreement. This Agreement provides certain compensation guarantees and other labor protective conditions for employees who are adversely affected by fluctuations and/or changes in the volume or character of employment brought about by new interdivisional service.

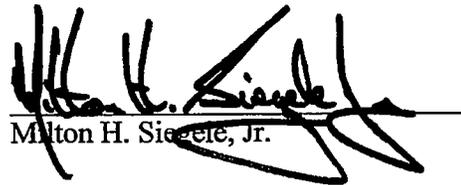
The Agreement also contains an arbitration mechanism in the event any dispute arises as to an employee's entitlement to protective payments.

8. Additionally, in side letter No. 1 to the Agreement with BLE, the parties have expressly agreed that Sections 6, 7, 8 and 9 of the Washington Job Protection Agreement ("WJPA"), dated May, 1936, will apply to any employees who are adversely affected at either Sheridan, Wyoming or Forsythe, Montana by the implementation of interdivisional service. The WJPA is the forerunner of all labor protective conditions and forms the basis for such labor protective conditions such as New York Dock and Norfolk & Western conditions. Generally, these protective conditions establish wage and benefit protections for employees who may be displaced or dismissed by virtue of the new interdivisional service. Similarly, WJPA provides for arbitration in the event a dispute arises as to an employee's entitlement to protective payments.

9. The agreements described above have already been executed and will become effective in the event BNSF obtains an operating agreement over TRR trackage that is the subject of these proceedings.

Verification

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


Milton H. Siegele, Jr.

Signed this 20th day of October, 1998.

EXHIBIT NO. 1

4/17/98

BNSF 6/16/98
CT 86 (i) Glendive - Decker Coal Pool

MEMORANDUM OF AGREEMENT

BURLINGTON NORTHERN SANTA FE RAILWAY

UNITED TRANSPORTATION UNION

Pursuant to the building of a new railroad between Spring Creek Mine and Miles City, Montana, and during the period that an operating agreement exists between BNSF and Tongue River Railroad, the parties agree that new interseniority service, pursuant to Article IX of the October 31, 1985 National Agreement, may be established between Decker, Montana and Glendive, Montana. The provisions of the June 28, 1972 "Master Interdivisional Agreement" will apply to this service, except as otherwise provided herein:

Section I.

- (a) A pool of crews may be established at both Decker and Glendive to sufficiently man this service between the terminals. Unless otherwise provided in this agreement, the former C. B. & Q. Schedule Agreement, will apply to this service. At each terminal a crew board having an "active" and "inactive" list will be maintained in manner described below:
- (b) The active list at each terminal will be the list from which the crews will be called in turn to operate trains to the opposite terminal.
- (c) The inactive list will be a list of crews who are at their home terminal and have not been advanced to the active list.

4/17/98

(d) Each crew arriving at the home terminal will be placed at the bottom of the inactive list unless otherwise specified by the daily activation message.

(e) Each crew arriving at the away-from-home terminal will be placed at the bottom of the active list.

(f) Crews will be moved from the inactive list to the active list relative to their board standing with respect to other home terminal crews. Home terminal crews will be placed on the active list relative to away-from-home terminal crews in the predetermined order designated by the Crew Utilization Specialist (or mutually agreed designee).

(g) Crew Utilization Specialist will issue a daily activation message no later than 12:00 PM (MST) that will set the active list for the next 24 hours. The message will include the following information:

(i) The order in which the crews will be called during the next 24 hours and the estimated train and time of call.

(ii) The time in which home terminal crew must protect this service, which will be as near as possible to 2 hours of their scheduled time of their train or deadhead.

Note: AFHT crews will protect upon rest.

(iii) The mileage deviation between terminal derived from tabulation of starts through midnight the previous night.

(vi) Should the mileage equalization reach a deviation in excess of 1500 miles, Crew Specialist will advise the UTT Local Chairmen of action taken to equalize miles.

Section 2.

(a) A crew not designated to be moved from the inactive list to the active list during the effective time of the daily message will not be required to protect service, nor will employee be disciplined for missing or not accepting a call prior to 12:00 PM the following day.

(b) A crew will not be required to protect service prior to their activation and will not be disciplined for missing a call under such circumstances.

4/17/98

Section 3.

(a) Except as otherwise provided in this agreement, crews will be called first in - first out, from the active list at each terminal, provided that they have full rest under the Hours of Service Law. If possible and no other trains would be delayed thereby, the first-out crews call may be held up as long as thirty minutes, so the they may obtain full rest and depart in proper standing. If the first-out crew on the active list does not have full rest, the next following crew who is fully rested will be used.

(b) If there are no crews available on the active list with full rest, then the first-out crew on the inactive list will be called. If this inactive list crew is unavailable, or unwilling to accept the call, an extra crew will be called to operate one round trip under terms of this agreement. In this event, the first out crew on the inactive list, will not be held accountable for missing or refusing the call.

(c) Away-from-home-terminal crews, in this pool may be called to "deadhead out of turn" at any time after their arrival, regardless of their standing in relation to crews at the home terminal, except they must be called first-in/first-out in relation to crews with the same home terminal. Such use shall not constitute a runaround of crews who may be first out at that terminal.

(d) If a crew arrives at the outlying terminal "out of turn" or if "bypassed" by another crew, who is entitled to restoration, the crew will be placed on the board, in the same order as called at their home terminal.

Section 4.

(a) The present short pool now maintained at Sheridan, working under C. B. & Q rules, and the present Glendive short pool, working under NP Rules, will be used to perform short work within this territory. The direction and destination of the train will determine which short pool will operate the train. Example: A train destined for the Northeast, operating through Miles City will be operated by Glendive based short pool. Any train operating South between Miles City and Decker will be operated by Sheridan Short Pool crews.

4/17/98

(b) These respective short pools will continue to be compensated under present schedule rules. There will be no restriction on work performed at terminals, or at any intermediate points of the run, in association with their own train. No compensation shall be received for switching of cars in their trains except under applicable agreements, for exchanging trains enroute, or for loading coal (except conversion to local rate) during their tour of duty. Short pool crews may be called upon to relieve any crews that expire under the under the Hours of Service Law in this territory without additional compensation.

Section 5.

There will be no restrictions on work that these interseniority crews may perform in association with their trains within this territory. Crews working in this interseniority service who are required to load trains will be allowed local rate of pay. There will be no additional compensation for switching of cars in their trains, except as provided under applicable agreements, or for exchanging trains enroute.

Section 6.

Except in cases of emergency (emergency meaning conditions such as acts of God, wrecks, washouts, floods and fires which interfere with the operation of trains), crews assigned to work in this interseniority district service will not be used for short service between the terminals. Short turn around service, short trips from either of the two terminals to intermediate points, and work trains or wrecker service will be provided by short pool crews. Crews in this interseniority service who are used in other than emergency, as stated above to provide other service, or who are used in other than an emergency as stated above to provide other service, or who are called, performs service, and subsequently tied up before departing the terminal, will be paid as per examples shown below:

"Example 1: Crew used in short service in other than emergency. Goes to the foot of the active or inactive board upon return. Paid actual miles run, but not less than line miles for a one way trip in interseniority service.

4/17/98

"Example 2: Crew is called, performs service on the assignment called for, from 1:00 PM until 4:30 PM and is tied up before departing the terminal. Crew will be paid actual one-way miles of trip in interseniority service, and will be placed at the foot of the active or inactive list. Note: Such provision is not applicable in the event an emergency condition arises after time of call.

"Example 3: Crew is called at their home terminal, performs interseniority service and departs terminal. The trip is terminated en route and they are returned to home terminal. Crew will be allowed a full round trip in this interseniority service, and will be placed at the foot of the inactive list.

"Example 4: Crew is called at their away-from-home terminal, performs interseniority district service and departs terminal. The trip is terminated en route and they are returned to their away-from-home terminal. Crew will be paid a one-way trip, and placed at the foot of the active list.

NOTE:

"When it becomes necessary to use a crew assigned to interseniority district service for a short service under the conditions described in Examples 1 and 2 above, the last-out fully rested crew on the inactive list will be used except where other arrangements are agreed to locally."

Section 7.

(a) Crews working in this interseniority district service shall be paid at the rate applicable for mileage encompassed in a basic day, as outlined in Article I of Arbitration Board No. 559, dated May 8, 1996. All miles run in excess of the miles encompassed in a basic day shall be paid for at a rate provided in Article I, Section 8 of Arbitration Board No. 559. Conductors deadheading in this service will be compensated as provided in Article VI of the October 31, 1985 UTU National Agreement.

(b) The mileage of this interseniority district service is () miles.
(When line is completed the actual mileage center of Sheridan Yard to center of Glendive Yard will be determined)

4/17/98

(c) This pool will be regulated within the range of 3600 to 4200 line miles per month. The ratio between the two ends of the pool will be kept as close to ratio of _____ % and _____ % as possible.

Section 8.

When a crew in this service qualifies for any payment under CB&Q Schedule Rule 64 (a), (b), this rule is modified to the extent that a conductor or trainmen in this interseniority district service who has been called and not used will be paid for the actual time, with a minimum of two hours, at basic through freight rate, and will stand first out. If crew performs service in an emergency situation, they will be paid actual time with a minimum of four hours at basic through freight rate, and will stand first out.

Section 9.

Crews who are performing service in this pool, who are not permitted to stop to eat will be allowed a \$6.55 meal allowance per tour of duty. However if a conductor requests to be permitted to leave the train in order to eat, and is granted permission to do so, the conductor will not be entitled to this allowance.

Section 10.

Except as specifically provided herein, nothing contained herein shall be construed as modifying, amending or superseding any of the provisions of agreements of schedule rules, or merger protection agreements as implemented between the Carrier and the United Transportation Union.

Section 11.

This agreement shall be effective on the date an operating agreement is effective with Tongue River, and shall remain in effect as long as an operating agreement exists

4/17/98

with Tongue River, or until modified or changed in accordance with provisions of the Railway Labor Act, as amended.

Signed at Fort Worth, Texas this 16th day of June 1998.

For:

BURLINGTON NORTHERN
SANTA FE RAILWAY

William H. Siegel

For:

UNITED TRANSPORTATION UNION

Carl Vahlheid

A. W. Mason

APPROVED:

Rich Mason
Vice President, UTU



BURLINGTON NORTHERN RAILROAD
Milton H. Siegel
Assistant Vice President Labor Relations
817 352-1066 Fax: 817 3352-7482

2800 Lou Mont Drive
P. O. Box 981030
Fort Worth, TX 76181-0030

SIDE LETTER ONE

Mr. Ken Mason
General Chairman UTU
8250 West 80th Avenue
The Meadows Centre, Units 7 & 8
Arvada, Colorado 80005

Mr. C. M. Vahldick
General Chairman UTU
227 East Sunshine, Suite 101
Springfield, Missouri 65807

Gentlemen:

This letter refers to BNSF and UTU Agreement dated June 16, 1998 concerning interseniority district service between Decker and Glendive, Montana.

The parties agree that upon implementation of this service, provided by the above referenced agreement, that any employee adversely effected at either Sheridan, Wyoming or Forsyth, Montana, will be handled under provisions of Article 13 of the June 28, 1972 "Master I D".

Sincerely,

Accepted:

Milton H. Siegel

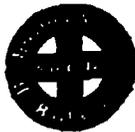
Carl Vahldick

Ken Mason

Approved:

Rich Morrison

BNSF



MILTON H. SICOLA JR.
Assistant Vice President

Bartlesville Northern Santa Fe

2600 Lou Mack Drive

Fort Worth, Texas 76161-0000
(817) 392-1024

SIDE LETTER TWO

Mr. Ken Mason
General Chairman UTU
8250 West 80th Avenue
The Meadows Centre, Units 7 & 8
Arvada, Colorado 80005

Mr. C. M. Vahldick
General Chairman, UTU
227 East Sunshine, Suite 101
Springfield, Missouri 65807

Gentlemen:

This letter refers to BNSF and UTU Agreement dated January 14, 1998 concerning interseniority district service between Decker and Glendive, Montana.

Section 7 (c) of the above referred agreement provides for an allocation of work between the two districts. The ratio in the agreement was intentionally left blank. The Organization has assured the Carrier that they will agree upon the allocation of work, and will supply the percentage ratios, prior to the start up of this service.

Sincerely,

Milton H. Sicola Jr.

Accepted:

Carl Vahldick

Ken Mason

Approved:

Rich Mason

BNSF



Mr. Tom H. Siegel Jr.
Assistant Vice President

Burlington Northern Santa Fe

2600 Lou Meek Drive

Fort Worth, Texas 76161-0130
(817) 352-1024

SIDE LETTER THREE

Mr. Ken Mason
General Chairman UTU
8250 West 80th Avenue
Arvada, Colorado 80005

Mr. C. M. Vahldick
General Chairman, UTU
227 East Sunshine, Suite 101
Springfield, Missouri 65807

Gentlemen:

This letter refers to BNSF and UTU Agreement dated June 16, 1998, concerning interseniority district service between Decker and Glendive, Montana.

During the discussions of this service, it became clear that at some point in time the area around Ashland, Montana would develop to such a point that it may be necessary to headquarter employees in this area. During these discussions it was agreed that before crews are headquartered in the Ashland area, the Carrier will meet with the appropriate UTU officials to allocate these jobs between the two districts.

Sincerely,

Tom H. Siegel Jr.

Accepted:

Carl Vahldick
Ken Mason

Approved:

Rich Muscarello

BNSF



MILTON H. STEGEL JR.
Assistant Vice President

Burlington Northern Santa Fe

2600 Lou Menk Drive

Fort Worth, Texas 76161-0030
(817) 352-1068

SIDE LETTER FOUR

Mr. Ken Mason
General Chairman UTU
8250 West 80th Avenue
Arvada, Colorado 80005

Mr. C. M. Vahldick
General Chairman UTU
227 East Sunshine, Suite 101
Springfield, Missouri 65807

Gentlemen:

This letter refers to BNSF and UTU Agreement dated June 16, 1998 to establish service on the proposed Tongue River Railroad between Decker and Glendive, Montana.

During our discussions on Section 4 (b) and Section 5, of the above agreement, which provides for work that may be performed by these crews under existing agreements. It is understood that this language does not modify existing road/yard agreements or any provision of applicable UTU Crew Consist Agreements.

Sincerely,

A handwritten signature in cursive script, reading "Milton H. Stegel Jr.", written over a horizontal line.

EXHIBIT NO. 2

BNSF 9/23/98
EF 86 (i) Decker / Glendive Coal Pool

MEMORANDUM OF AGREEMENT

BURLINGTON NORTHERN SANTA FE RAILWAY

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

Pursuant to the building of a new railroad between Spring Creek Mine and Miles City, Montana, and during the period that an operating agreement exists between BNSF and Tongue River Railroad, the parties agree that new interseniority service pursuant to Article IX of Arbitration Award 458, may be established between Decker, Montana and Glendive, Montana, under the following terms and conditions:

Section 1.

(a) A pool of freight engineers may be established at both Decker and Glendive. A sufficient number of engineers will be maintained to handle the traffic in the manner prescribed herein. Unless as otherwise provided in this agreement, the former C B & Q Schedule Agreement will apply to this service. At each terminal a crew board having an "active and inactive" list will be maintained in the manner described below:

(b) The active list at each terminal will be the list from which the engineers will be called in turn to operate to the opposite terminal.

(c) The inactive list will be a list of engineers who are at their home terminal and have not been advanced to the active list.

(d) Each crew arriving at the home terminal will be placed at the bottom of the inactive list unless otherwise specified by the daily activation message.

(e) Each engineer arriving at the away-from-home terminal will be placed at the bottom of the active list.

(f) Engineers will be moved from the inactive list relative to their board standing with respect to other home terminal engineers. Home terminal engineers will be placed on the active list relative to away-from-home terminal engineers in the predetermined order designated by the Crew Utilization Specialist.

(g) Crew Utilization Specialist will issue a daily activation message no later than 12:00 P. M. (MST) that will set the active list for the next 24 hours. The message will include the following information:

(i) The order in which the crews will be called during the next 24 hours and the estimated train and time of call.

(ii) The time in which home terminal crews must protect this service will be as near as possible to 2 hours of their scheduled time of train or deadhead.

Note: AFHT crews will protect upon rest.

(iii) The mileage deviation between terminals derived from tabulation of starts through midnight the previous night.

(iii) Should the mileage equalization reach a deviation in excess of 1500 miles, Crew Specialist will advise the BLE Local Chairman of action taken to equalize the miles.

Section 2.

(a) An engineer not designated to be moved from the inactive list during the effected time of the daily message will not be required to protect service, nor will employee be disciplined for missing or not accepting a call prior to 12:00 P. M. the following day.

(b) An engineer will not be required to protect service prior to their activation and will not be disciplined for missing a call under such circumstances.

Section 3.

(a) Except as otherwise provided in this agreement, engineers will be called first-in /first-out from the active list at each terminal, provided they have full rest under the Hours of Service Law. If possible and no other trains would be delayed thereby, the first-out engineers call may be held up as long as thirty minutes, so as to obtain full rest and depart in proper order. If the first-out engineer on the active list does not have full rest the next following engineer who is fully rested will be used.

(b) If there are no rested engineers available on the active list with full rest, then the first-out engineer on the inactive list will be called. If this inactive list engineer is unavailable, or unwilling to accept the call, an extra engineer will be used to operate one round trip under terms of this agreement. In this event, the first out engineer on the inactive list, will not be held accountable for missing or refusing the call.

(c) Away-from-home terminal crews, in this pool may be called to "deadhead out of turn" at any time after arrival, regardless of their standing in relation to crews at the home terminal, except they must be called first-in/first-out in relation to other engineers with the same home terminal. Such use shall not constitute a runaround of engineers who may be first-out at that terminal.

(d) If an engineer arrives at the outlying terminal "out of turn" or if "bypassed" by another engineer, who is entitled to restoration, the engineers will be placed on the board, in the same order as called at their home terminal.

Section 4.

There shall be no restriction on the work which may be performed by these interseniority engineers, in association with their trains, within this territory. Engineers working in this interseniority service who are required to load coal trains, will be compensated for local freight rate, provided under the NP Agreement. There will be no additional compensation for switching cars of their trains, except as provided under applicable agreements, or for exchanging trains enroute.

Section 5.

Except in cases of emergency (emergency meaning conditions such as acts of God, wrecks, washouts, floods and fires which interfere with the operation of trains),

engineers assigned to work in this interseniority district service will not be used for short service between the two established terminals. Engineers assigned to work in this service who are used other than an emergency as stated above to provide other service, will be paid not less than they would have earned (one way trip) had they remained on their pool turn. Engineer used in this instance will be placed on the bottom of the active list.

Section 6.

(a) Subject to the exceptions contained in this agreement, engineers working in this service, who are not called from the board at either terminal to report for duty in the proper order of their standing will be allowed a basic day and shall continue to retain the first-out position.

(b) When an engineer in this service qualifies for any payment under CB&Q Schedule Rule 33 (a), (b) and (c), captioned "Called and not wanted", "Call Canceled", and "Called, performs Service and Not Wanted", respectively, the engineer will continue to stand first out, instead of last out. When the engineer has performed some service or has been called and released under that rule and is returned to the first-out position, and compensated in accordance with Rule 33, the engineer will not be called for service again until rested.

Notes:

(1) The provisions of this paragraph do not apply to individual extra engineers when the call and release occurs at their extra board terminal. Such extra engineer will be handled (and paid) in accordance with applicable schedule agreement rules.

(2) It is understood that when an engineer has been called and released in a manner that did not interrupt "rest" under the Hour of Service Act, then the engineer retains the same position and will not require an additional 8 hours rest before being subject to another call.

Section 7.

When an engineer is required to report for duty or is relieved from duty at a point other than the on and off duty points fixed for the service established hereunder, the Carrier shall authorize and provide suitable transportation for the engineer.

- Note: Suitable transportation includes carrier-owned or provided passenger-carrying motor vehicle or taxi.

Section 8.

When two engineers are called for the same train (one to work and one to deadhead), if one of the engineers is not rested, and the other is rested, the rested engineer will work the train and the unrested will deadhead. Otherwise, applicable rules will apply.

Section 9.

(a) Engineers working in this interseniority district service shall be paid at the rate applicable for mileage encompassed in a basic day, as outlined in Article I of 1996 BN/BLE Agreement dated June 1, 1996. All miles run in excess of the miles encompassed in a basic day shall be paid for at a rate provided in Article IX, Section 2 of Arbitration Award 458, as amended by Article 1, Section 8 of BN/BLE Agreement dated June 1, 1996. Weight-on-drivers will apply to mileage rates calculated in accordance with this provision. Employees deadheading in this service will be compensated as provided in Arbitration Award 458.

- (b) The mileage of this interseniority district service is (_____) miles.
(When line is completed the actual mileage center of Sheridan Yard to center of Glendive Yard will be determined)

Section 10.

(a) Discipline hearings or investigations involving engineers in the interseniority service will be held at the engineers home terminal, except when the majority of the principals who are to be called live elsewhere. If the investigation is held at a location

other than the engineer's home terminal, the engineer will be paid for travel time and the time consumed by the investigation on a minute basis at the pro-rata rate of pay for the last previous service performed unless it is established in the investigation that the engineer was guilty of a rules violation which results in suspension or discharge. Should an engineer lose a full round trip as a result of attending an investigation and the engineer is not suspended or discharged for a rule violation the engineer will also be compensated the equivalent of the earnings of the engineer who worked the turn.

(b) Should an engineer be tied up at the location where the investigation is held, the provisions of Article II (Expenses Away From Home) of the June 25, 1964 National Agreement, as amended, will apply. Transportation to and from investigation, held at other than home terminal will be provided by the Carrier.

Section 11.

(a) The present short pool now maintained at Sheridan, working under C B & Q rules, and the present Glendive short pool, working under NP rules, will be used to perform short work within this territory. The direction and destination of the train will determine which pool will operate the train. Example: A train destined for the Northeast, operating through Miles City will be operated by Glendive based short pool crews. Any train to be operated South between Miles City and Decker will be operated by Sheridan short pool crews.

(b) These respective short pools will continue to be compensated under present schedule rules. There will be no restrictions on work performed at terminals, or at any intermediate point of the run, in association with their train. No compensation shall be received for switching of cars in their trains except under applicable agreements, for exchanging trains enroute, or for loading coal (except conversion to local rate) during their tour of duty. These short pool crews may be called upon to relieve any crew that expire under the Hours of Service Law in this territory, without additional compensation.

Section 12.

Engineers will be furnished lockers and adequate washroom facilities at the away-from-home terminal in the immediate vicinity of on/off duty point (or transportation to and from the facility will be provided, if not in the vicinity). Minimum size of lockers will be 21" X 18" X 72".

Section 13.

(a) The following items will be maintained in proper condition on engines used in this service:

- (1) Cab heaters
- (2) Cab weather-stripping
- (3) Cab windshield wiper
- (4) Drinking water and operable cooler
- (5) Toilet Facilities
- (6) Working radio
- (7) Working speed recorder

(b) Engineers will report any defects of items above on the proper form supplied for such purpose. Notation by engineers of defects will contain sufficient detail to enable prompt identification and correction of such defects.

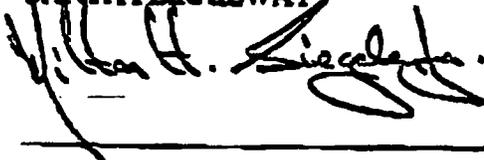
Section 14.

Except as specifically provided herein, nothing contained herein shall be construed as modifying, amending or superseding any of the provisions of agreements of schedule rule, or merger protection agreements as implemented between the Carrier and the Brotherhood of Locomotive Engineers. This agreement shall be effective on the date an operating agreement is made with Tongue River, and shall remain in effect as long as operating agreement exists with Tongue River, or until modified in accordance with the Railway Labor Act as amended.

Signed at Fort Worth, Texas this 23rd day of September 1998.

For:

BURLINGTON NORTHERN
SANTA FE RAILWAY



For:

BROTHERHOOD OF LOCOMOTIVE
ENGINEERS



SIDE LETTER NUMBER ONE

Mr. M. W. Geiger Jr.
General Chairman BLE
190 East 5th Street Suite # 105
St. Paul, Minnesota 55101 - 1637

Dear Sir:

This letter refers to BNSF and BLE Agreement dated September 23 1998 concerning interseniority district service between Decker and Glendive, Montana.

The parties agree that upon implementation of this service, provided for by the above referenced agreement, that any employee adversely effected at either Sheridan, Wyoming or Forsyth, Montana, will be handled under provisions of Section 6, 7, 8 and 9 of the Washington Job Protection Agreement dated May, 1936, except for the purposes of this agreement Section 7 (a) is amended to read 100% (less earnings from outside employment) instead of 60% and extended to provide period of payment equivalent to length of service not to exceed five years, and to provide further that allowances in Sections 6 and 7 be increased by subsequent wage increases.

Any engineer required to change residence shall be subject to the benefits contained in Section 10 and 11 of Washington Job Protection Agreement and in addition to such benefits shall receive a transfer allowance of four hundred dollars (\$400.00) and five working days pay instead of two working days provided by Section 10(a) of said agreement. Under this Section, change of residence shall not be considered required if the reporting point to which the engineer is changed not more than thirty miles from the former reporting point.

Sincerely,

William H. Siegel Jr.

Accepted:

[Signature]

SIDE LETTER NUMBER TWO

Mr. M. W. Geiger Jr.
General Chairman BLE
190 East 5th Street Suite #105
St. Paul, Minnesota 55101 - 1637

Dear Sir:

This letter refers to BNSF and BLE Agreement dated September 23, 1998 concerning interseniority district service between Decker and Glendive, Montana. This agreement does not change the present understandings applicable to Sheridan based engineers operating trains between Gillette, Wyoming and Spring Creek Mine.

This agreement also provides for Decker, Montana to be one of the terminals of this service. It is understood that the source of supply for Decker Terminal will be the Sheridan (Wyoming Seniority District).

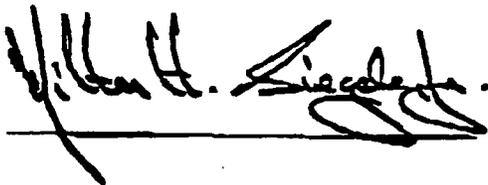
It is also agreed that engineers working in this interseniority service, headquartered at either terminal, will be allowed the mileage from the center of Sheridan Yard to center of Glendive Yard for each tour of duty. The actual mileage figure will be measured upon completion of the line. This entire pool will be regulated on mileage within the ranges provided in BN 2/24/81, QPS. 36-81, or as agreed to locally. The ratio between the two seniority districts will be:

Wyoming District _____ %

Montana/Dakota _____ %

Sincerely,

Accepted:





SIDE LETTER NUMBER THREE

Mr. M. W. Geiger Jr.
General Chairman BLE
190 East 5th Street Suite # 105
St. Paul, Minnesota 55101 - 1637

Dear Sir:

This letter refers to BNSF and BLE Agreement dated September 23, 1998 concerning interseniority district service between Decker and Glendive, Montana.

During the discussions of this service, it became clear that at some point in time the area around Ashland, Montana would develop to such a point that it may be necessary to headquarter employees in this area. During these discussions it was agreed that before crews are headquartered in the Ashland area, the Carrier will meet with the appropriate BLE officials to discuss these jobs and any allocation between the districts.

Sincerely,

Accepted:

Walter H. Siegel Jr.

W. Siegel

SIDE LETTER NUMBER FOUR

Mr. M. W. Geiger Jr.
General Chairman BLE
190 East 5th Street Suite # 109
St. Paul, Minnesota 55101 - 1637

Dear Sir:

This letter refers to BNSF and BLE Agreement dated September 23, 1998 concerning interseniority district service between Decker and Glendive, Montana.

During the discussions it was agreed that the following examples will be adapted from the present interseniority district agreement between Sheridan and Forsyth:

"Example 1: Crew used in short service in other than emergency. Crew goes to the bottom of the active or inactive board upon return. Paid actual miles run, but not less than line miles for a one way trip in this interseniority service."

"Example 2: Crew is called, performs service on the assignment called for from 1:00 p.m. to 4:30 p.m. and is tied up before departing the terminal. Crew will be paid actual one-way miles and placed at the foot of the active or inactive list. Note: *Such provision is not applicable in the event an emergency condition arises after time of call.*

"Example 3: Crew is called at their home terminal, performs interseniority district service and departs terminal. The trip is terminated enroute and they are returned to home terminal. Crew will be paid for a full round trip under this agreement, and will be placed at the foot of the inactive list.

"Example 4: Crew is called at their away-from-home terminal, performs interseniority district service and depart terminal. The trip is terminated enroute and they are returned

to their away-from-home terminal. Crew will be paid for a one-way trip, under this agreement and placed at the foot of the active list

NOTE:

"When it becomes necessary to use a crew assigned to interseniority district service for a short service trip under the conditions described in Examples 1 and 2 above, the last-out fully rested crew on the inactive list will be used except where other arrangements are agreed to locally."

Sincerely,

A handwritten signature in cursive script, appearing to read "William H. Siedel", written over a horizontal line.

Accepted:

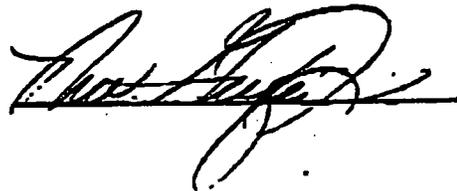
A handwritten signature in cursive script, written over a horizontal line.

EXHIBIT NO. 3

(RETYPE OF ORIGINAL AGREEMENT)

" 1972 MASTER U T U INTERDIVISIONAL AGREEMENT "

MEMORANDUM OF AGREEMENT

between

BURLINGTON NORTHERN INC.

(the Carrier)

and

Its Employees Represented by

UNITED TRANSPORTATION UNION C & T

Under the provisions of Article XII of the National Mediation Agreement dated January 27, 1972 between the United Transportation Union and various Carriers, including Burlington Northern Inc., it is hereby agreed that such locations as "Interdivisional Service" is established the following provisions will govern for conductors and trainmen assigned to such service.

"NOTE: As used in this agreement, the term 'interdivisional service' includes interdivisional, interseniority district, intradivisional and/or intraseniority district service."

1. Separate agreements will be made to provide for the following at each location where "Interdivisional Service" is established:

(a) Terminals will be defined.

investigation held at other than home terminal will be provided by the Carrier. Travel to attend investigation will not be subject to payment under any rules applicable to "deadheading".

11. In the application of initial terminal delay rules, the phrase "train leaves the terminal" means when the train actually starts on its road trip from the track where the train is first made up. However, if the train is moved off the assembly track for the convenience of the Carrier and not with the intent of making a continuous outbound move, initial terminal time will continue until continuous outbound move is started. The continuous move is not disrupted when train is stopped to permit the lining of a switch.

12. When "Interdivisional Service" is established, conductors will not be required to qualify themselves over the territory with which they are not acquainted on their own time. If there is no member of the train crew who is acquainted with the territory, a pilot conductor will be provided. The Carrier will determine the number of trips a conductor should make to become qualified.

13. Protected conductors and trainmen who are affected by the application of this agreement shall have the option of the protective conditions as set forth in Article XIII of the January 27, 1972 National Agreement or the provisions of Burlington Northern Merger Protective Agreements dated December 14, 1965, and January 10, 1968. When an employee elects the option provided herein, such election may not later be revoked. The protective provisions of Section 6 of the Merger Protective Agreement will also apply to protected employees of the former CB&Q. If due to the operation of "Interdivisional Service" an employee is placed in a position which prevents him from earning the equivalent of his merger guarantee and the earnings of an employee working at a point over 35 miles from his resident headquarters is used as an offset, the claimant employee may move to the terminal of the offset assignment and will be allowed the benefits set forth in Section 6 of the applicable protective agreement.

LESHOCK

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

TONGUE RIVER RAILROAD COMPANY – RAIL CONSTRUCTION AND OPERATION –
WESTERN ALIGNMENT IN ROSEBUD AND BIG HORN COUNTIES, MONTANA

REBUTTAL VERIFIED STATEMENT OF J. CHRIS LESHOCK

My name is J. Chris Leshock, and I reside at 121 Overland Court, Lafayette, CO 80026. I am a transportation and coal consultant at Resource Data International (“RDI”), a Boulder, CO based energy information and consulting company. As a consultant at RDI, I have directed coal, coal transportation, and electric power projects for mining companies, Class I rail carriers, regional rail carriers, electric utilities, independent power producers, and major financial institutions who fund investments in these industries. In my capacities at RDI, I have participated in the annual energy forecast project which is published as “*The Outlook for Coal and Competing Fuels*”. I have extensive on-site experience in these industries, having been at 20 coal mines (9 of the 10 major Wyoming or Southern Powder River Basin (“SPRB”) mines, and 3 of the 5 major Montana or Northern Powder River Basin (“NPRB”) mines), 41 power plants (12 of which have burned NPRB coal), and 14 coal transloading terminals.

I was previously employed at Commonwealth Edison, one of the largest purchasers of

both Northern and Southern Powder River Basin coal. At Commonwealth Edison, I was responsible for the operational logistics of coal delivery, coal and transportation bid evaluation, and involved in the long-term fuel planning for the utility. In addition, I was responsible for the operation of a fleet of 3,000 aluminum railcars used in the transport of western coal. I hold a B.S. in accounting from Marquette University, a MBA in Finance from DePaul University, and am a Certified Public Accountant. I have prepared testimony for presentation before the Board in the UP/SP merger (Finance Docket No. 32760), the CSX/NS acquisition of Conrail (Finance Docket No. 33388), Western Fuels Association vs. BNSF (Finance Docket No. 41987), and testimony in two Canadian rail rate cases and several rail contract litigations. RDI's president, Ronald McMahan, and senior economist, Larry Metzroth, have previously filed Verified Statements in Sub-dockets 2 and 3 of this matter. In this testimony I will address comments made regarding Montana coal in this matter.

1. Northern Plains Resource Council's ("NPRC") Response to Application.

The NPRC's Response to Application dated September 15, 1998 criticizes TRRC's projections about Montana coal development. I will address the criticisms contained in the attached verified statements of Edward P. Evert and Dr. Arnold Silverman.

A. Evert Verified Statement

The following comments are made in response to the Verified Statement of Mr. Edward P. Evert, attached as Exhibit A to the NPRC filing. As a general matter, Mr. Evert's Verified Statement contains numerous factual errors, and several statements that cannot be reconciled with historical data. The number of errors, misstatements, and his lack of experience with Northern PRB coal markets raise serious doubt regarding the validity of his arguments.

In his statement on page 4, Mr. Evert notes that his statement from a June 18, 1992 Verified Statement "has been borne out for the most part". In 1992 he stated that "Demand for

Western low-sulfur coal in the Upper Midwest is likely to be stagnant or rise slowly for the foreseeable future.” Mr. Evert then attempts to demonstrate the accuracy of this 1992 prediction by comparing coal consumption in only three states (Michigan, Minnesota and Michigan) between the years 1989 and 1995. His statement was signed on September 13, 1998 which allowed for the inclusion of data for 1996 and 1997. By limiting his comparison to the 1989 to 1995 period, rather than 1989 through 1997, Mr. Evert artificially reduces coal consumption growth in the three states by 68 percent. Coal consumption at the utilities within the three states increased from 64.2 million tons in 1989, to 69.4 million tons in 1995 (an 8.2% increase), and reached 73.0 million tons in 1997 (a 13.7% increase from 1989) (See Table 1A).

Further, Mr. Evert's figures for utility consumption of coal in the states of Michigan and Wisconsin are wrong (See Tables 1A, 1B, 1C). Mr. Evert does not indicate the source of his information. However, publicly available information shows that actual coal consumption in 1989 at utilities in Michigan was 25% higher and in Wisconsin was 45% higher than Mr. Evert asserts.

TABLE 1A
UTILITY COAL CONSUMPTION BY STATE, 1989-1997

STATE	ELECTRIC UTILITY COAL CONSUMPTION (MILLIONS OF TONS)									PERCENT INCREASE	
	1989	1990	1991	1992	1993	1994	1995	1996	1997	89 TO 95	89 TO 97
MI	30.0	29.7	29.9	28.2	28.7	31.1	31.2	32.2	31.9	4.0%	6.5%
MN	16.4	16.9	16.1	15.7	16.8	17.0	17.3	17.6	17.5	5.6%	6.9%
WI	17.9	18.1	18.8	18.2	19.0	19.7	21.0	22.2	23.6	17.5%	31.9%
subtotal	64.2	64.8	64.8	62.2	64.6	67.8	69.4	72.0	73.0	8.2%	13.7%
IL	25.8	27.4	27.8	25.3	31.7	32.6	33.5	38.1	41.0	29.9%	59.2%
IN	42.4	47.7	47.7	46.9	48.8	50.6	52.1	52.8	54.6	22.8%	28.8%
TOTAL	132.4	139.8	140.3	134.5	145.2	151.0	155.0	162.9	168.6	17.1%	27.4%

SOURCE: US GOVERNMENT EIA FORM 759

Table 1B
EVERT CONSUMPTION FIGURES (MILLIONS OF TONS)

STATE	1989	1990	1991	1992	1993	1994	1995
MI	22.5						23.7
MN	16.1						16.3
WI	9.9						11.8

SOURCE: UNKNOWN

Table 1C
DIFFERENCE BETWEEN EIA 759 UTILITY CONSUMPTION AND EVERT

STATE	1989			1995		
MI	-7.5	OR	-25%	-7.5	OR	-24%
MN	-0.3	OR	-2%	-0.3	OR	-2%
WI	-8.0	OR	-45%	-8.0	OR	-38%

Mr. Evert's analysis is also suspect because it excluded the Upper Midwestern states of Illinois and Indiana, which had significant growth in coal demand.¹ Illinois and Indiana saw their utility coal demand grow 59% and 29%, respectively (Table 1A), among the largest increases of any state in the Upper Midwest.

A consideration of the cumulative impacts resulting from adjusting for Mr. Evert's incorrect data, old time frame, and selective exclusion of the states of Illinois and Indiana increases coal consumption at Upper Midwest utility power plants changes his incorrect figure of

¹ In his statement on page 4, Mr. Evert defines the Upper Midwest as including the states of Michigan, Minnesota, Wisconsin, Ohio, Pennsylvania, New York and the Canadian province of Ontario. However, Mr. Evert excludes (no reason given) Upper Midwestern states with substantial coal demand growth -- Illinois and Indiana.

8.2% (the weighted average increase for Michigan, Minnesota and Wisconsin through 1995) to 27.4% (Table 1A).

In this same section (page 4) Mr. Evert is also confusing or mixing the use of *western low-sulfur coal* demand and *total coal* consumption. The two are obviously very different in regions such as the Upper Midwest where multiple coal sources are purchased and consumed. Mr. Evert states that "Demand for Western low-sulfur coal in the Upper Midwest is likely to be stagnant or grow slowly for the foreseeable future". He then attempts to support that statement with incorrect *total coal consumption* statistics (which were shown to be erroneous above) showing slow total coal consumption growth. A proper analysis of western low-sulfur coal growth would involve examination of utility coal purchases from FERC form 423, the only data source showing detailed source and quality of the fuel purchased.² An analysis of coal purchases divided between western low-sulfur coal sources and non-western low-sulfur coal sources is presented in Table 2. Purchase data indicate that demand for western low-sulfur coal in five Midwest states has been extremely strong in recent years. Western low-sulfur coal demand in these states increased from 54 million tons in 1989 to 101 million tons in 1997, an 86% increase. Quite clearly demand for western low-sulfur coal has not stagnated, but has increased beyond nearly every industry forecast of the early 1990s.

² Government data sources other than Form 423 do not report coal source or quality statistics.

TABLE 2
UTILITY COAL PURCHASES BY STATE, 1989-1997

PLANT STATE	COAL SOURCE	UTILITY COAL PURCHASES (TONS 000)									% INCREASE 89 TO 97
		1989	1990	1991	1992	1993	1994	1995	1996	1997	
MI	NON-WESTERN	16.4	15.8	14.7	14.1	13.0	15.4	13.0	11.2	12.7	55%
	WESTERN	12.6	13.9	14.1	13.8	14.9	16.0	18.2	19.0	19.4	
	MI Total	29.0	29.7	28.9	27.9	27.9	31.4	31.2	30.2	32.1	
	PERCENT WESTERN	43%	47%	49%	50%	53%	51%	58%	63%	60%	
MN	NON-WESTERN	0.1	0.1	0.1	0.1	0.1	0.2	0.0	0.1	0.1	16%
	WESTERN	15.1	15.9	16.1	15.1	15.9	16.9	16.8	16.7	17.5	
	MN Total	15.2	16.1	16.2	15.2	16.0	17.1	16.9	16.7	17.6	
	PERCENT WESTERN	99%	99%	99%	100%	100%	99%	100%	99%	99%	
WI	NON-WESTERN	5.6	5.2	5.6	4.6	2.2	2.7	2.4	2.2	3.3	69%
	WESTERN	11.9	12.6	13.5	13.0	15.8	16.9	18.8	20.6	20.2	
	WI Total	17.5	17.8	19.0	17.6	18.0	19.6	21.2	22.8	23.5	
	PERCENT WESTERN	68%	71%	71%	74%	88%	86%	89%	90%	86%	
IL	NON-WESTERN	18.6	20.1	19.7	17.3	16.0	17.2	14.0	15.0	16.4	304%
	WESTERN	6.5	6.4	7.2	8.1	12.1	15.7	19.8	22.5	26.2	
	IL Total	25.1	26.5	26.8	25.4	28.1	32.9	33.7	37.5	42.6	
	PERCENT WESTERN	26%	24%	27%	32%	43%	48%	59%	60%	62%	
IN	NON-WESTERN	32.2	36.3	33.2	34.8	29.7	36.4	30.9	32.3	35.4	116%
	WESTERN	8.3	12.9	13.1	13.0	14.1	17.2	18.8	18.9	17.9	
	IN Total	40.6	49.2	46.3	47.8	43.8	53.5	49.7	51.2	53.4	
	PERCENT WESTERN	20%	26%	28%	27%	32%	32%	38%	37%	34%	
TOTAL	NON-WESTERN	73.0	77.5	73.3	70.9	61.1	71.8	60.3	60.8	67.9	86%
	WESTERN	54.3	61.7	64.0	63.1	72.7	82.7	92.4	97.5	101.3	
	5 STATE TOTAL	127.3	139.2	137.2	133.9	133.7	154.5	152.7	158.4	169.2	
	PERCENT WESTERN	43%	44%	47%	47%	54%	54%	61%	62%	60%	

SOURCE: FERC FORM 423

Mr. Evert also fails to note recent market expansions of NPRB coal, most of which is compliance coal.³ Such NPRB coal has developed significant new market footholds in the states of Mississippi and South Dakota, and is being tested in utility markets in Kansas, Iowa, and the

³ As Dr. McMahan explained in his April 1998 verified statement at 2, compliance coal is coal with a sulfur dioxide content of less than 1.2 pounds per million Btu. Currently, the only two Montana mines that produce compliance coal are the mines in the Decker-Spring Creek area. The Ashland area mines that would be served by the Tongue River Railroad contain compliance coal.

Canadian province of Manitoba. As of 1997, these new markets represent over 13% of the total market demand for NPRB coal.

**TABLE 3
NEW NPRB COAL MARKETS BY STATE PURCHASES, 1989-1997**

STATE	TONS (MILLIONS)									
	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998 E
MS			0.1	0.1	0.2	1.3	1.3	2.2	3.2	3.3
SD							0.5	1.3	1.9	1.9
KS									0.1	0.1
IA								0.0	0.1	0.1
TOTAL	0.0	0.0	0.1	0.1	0.2	1.3	1.8	3.5	5.3	5.4

SOURCE: FERC FORM 423, 1998 TONNAGE ESTIMATED BASED ON SHIPMENTS THROUGH JULY

On pages 4-5 of Mr. Evert's Verified Statement, he questions RDI's previous statement in a May 9, 1994 report indicating that there would be little initial change in rail rates if the TRR project was completed. Mr. Evert says "This discussion [on rail rate changes] must be speculative because no one can be sure of the impact of competitive factors." The change in competitive factors resulting from the completion of the TRR can be accurately modeled, as distance changes, construction costs, operating costs and other key factors are known to a very accurate level. Existing movements of coal that would utilize the shorter TRR line through Montana would continue to move under existing contract rail rates. Only upon the expiration of those rail contracts would rates be eligible for change. While the cost structure to BNSF would likely change upon the use of the shorter TRR line, this would only impact BNSF's net income, not contract rates. Furthermore, future rates for movements utilizing the TRR would be based primarily on market competition and not cost considerations, although cost would set the price floor. Coal that is moving today via Huntley, Montana ("around the horn") is doing so because it is the lowest delivered cost route for coal.

On page 5 of Mr. Evert's Verified Statement, he discusses a "profound variance" in the RDI forecasts of NPRB and SPRB coal demand (from a May 9, 1994 RDI report). In this

exercise, Mr. Evert attempts to portray the RDI forecasts as unreliable. It should be noted that RDI conducts an ongoing forecast process in which econometric models featuring highly complex linear programming techniques are used to develop supply and demand forecasts for economic activity, electricity, resultant coal activity, and other fossil fuel sources based on a detailed, "bottoms-up" approach. The forecasts are tempered by the knowledge, experience, and opinion of over a dozen associates within RDI who bring previous industry experience to the process. The final forecasts are published annually as a several hundred page document which currently retails for over \$6,000. In a typical year approximately 100 copies of the forecast, titled "*The Outlook for Coal and Competing Fuels*" (hereafter "Outlook") are sold to clients. A majority of the clients are mining concerns. RDI has historically maintained a significant degree of conservatism in its projections of coal demand and future coal prices.

In his criticism of the RDI coal forecast for NPRB and SPRB volumes, Mr. Evert makes a somewhat significant error. In comparing the RDI forecast demand with actual production, Mr. Evert uses the wrong RDI demand number. He incorrectly states "Whereas the [1993 RDI] report forecasts a production of 36,696,000 tons in the NPRB in 1996, the actual production was 38,288,000." Intentional mistake on Mr. Evert's behalf or not, the 36,696,000 ton figure is clearly under a column titled "Utility" for Utility coal demand. Total NPRB demand is found three columns to the right, which is titled "Total" and includes the non-utility demand sources of Exports and Industrial, both of which are clearly labeled. Mr. Evert should have been comparing RDI's "Total NPRB coal demand" forecast figure of 38,266,000 tons to his NPRB production figure of 38,288,000 tons. Had Mr. Evert done so, he would have found that the RDI NPRB forecast for 1996 was off by only 22,000 tons or 0.06% (six one-hundredths of one percent, or conversely the RDI NPRB forecast was 99.94% accurate). Nowhere in Mr. Evert's credentials

does Mr. Evert refer to any coal market forecasting experience, nor does he offer any alternative forecast of NPRB coal demand.

On page 5 of his Verified Report Mr. Evert states that “Mr. McMahan’s credentials indicate that he is an energy economist. This is impressive, but this proceeding clearly needs a market economist.” Unfortunately Mr. Evert must not have reviewed Dr. McMahan’s credentials thoroughly. In his Verified Statement of April 22, 1998, Dr. McMahan wrote “I am an energy economist and for the past twenty five years *have specialized in the US coal and electricity markets.*” Dr. McMahan holds a Ph.D. in Economics, created industry standard databases for the coal and electric power industry in the 1980’s, and has conducted confidential consulting engagements, published multi-client syndicated studies, is a highly sought-after featured speaker, and has provided expert testimony and Verified Statements before courts, the STB and its predecessor, the ICC.⁴ I know of no person more qualified to quantify a coal market, and the impact of the TRR on the NPRB coal region.

Within the same paragraph on page 5 of his Verified Statement, Mr. Evert criticizes Dr. McMahan for considering factors that Mr. Evert claims do not directly impact the competitiveness of different coals in the marketplace. Mr. Evert states, “The amassing of all sorts of physical characteristics regarding the properties of coal, the description of boilers and relative distances fall before the force of competitive economics. With the supremacy of the marketplace, physical attributes can dominate only where the market allows it.” However, contrary to Mr. Evert’s assertions, the “amassing of all sorts of physical characteristics” is critical to determining what coal or combinations of coal will be the lowest *generating cost* fuel

⁴ RDI’s database clients include companies that mine more than 80% of the coal mined in the US, purchase more than 80% of the coal bought in the US, and generate more than 80% of

(Continued ...)

at a utility power plant. Physical characteristics of the coal, such as heat content (Btu's/lb.) will determine the value of the coal. The physical characteristic of sulfur content will determine if a coal is even eligible for use at a plant (as many states and national New Source Performance Standards impose sulfur content ceilings), as well as the real financial penalty associated with its sulfur emissions. Unique coal ash characteristics such as base-to-acid ratio and sodium content can preclude a coal from use at certain boilers, or it can provide a real, quantifiable generation cost advantage. Boiler and generator characteristics can dictate that higher delivered cost coal will be the lowest power production cost coal type. Even characteristics of the electric power market can influence what coal type is ultimately the most effective fuel type.

The electric utility industry through its trade association (the Electric Power Research Institute "EPRI") has developed a highly complex computer model called the "Coal Quality Impact Model" ("CQIM") which quantifies the cost impacts of varying coal quality characteristics at individual generating units that incorporate unique boiler and generator characteristics. Although this model has a purchase price of over \$200,000 and requires a full-time computer technician to operate, a majority of coal burning utilities have purchased and currently utilize the model. This is but one indication that utilities are deeply concerned not only with the delivered cost of coal, but also with the impacts of various "physical characteristics" on the ultimate price of delivered power.

Historic coal purchasing patterns have been reviewed to identify those plants that burn higher cost non-PRB coal even when PRB coal has been test burned and proven to be a lower *delivered* cost coal. Table 4 below indicates that eleven power plants that had purchased lower-cost PRB coal on a spot basis also engaged in spot purchases of higher-cost traditional non-PRB

the electricity generated in the US.

coal in 1997. In short, these plants have burned PRB coal in the past, but as a result of the physical characteristics of the coal or generating unit, the utility chose to operate with all or a portion of a higher-delivered cost coal. This list of plants is limited only to those plants that have purchased PRB coal on a spot basis in the past, and purchased traditional, non-PRB coal on a spot basis in 1997. An additional 15 plants were excluded from the table below, because their past PRB purchases or 1997 non-PRB coal purchases were on a contract-only basis.

**TABLE 4
UTILITY PLANTS WITH LOWER DELIVERED COST PRB COAL CONTINUE TO
BURN HIGHER COST COAL**

POWER PLANT	PRB PURCHASED YEAR	PRB PRICE	1997 NON-PRB COAL	NON-PRB COAL PRICE
HAVANA	1991	129.6	ILB	130.7
NEAL	1995	76.5	SWY	112.8
COBB	1997	120.3	CAPP	153.7
WHITING	1997	118.1	CAPP	143.8
MONROE	1997	99.6	CAPP	139.2
ECKERT	1997	146.3	CAPP	164.9
SILVER LAKE	1994	116.5	ILB	148.9
OAK CREEK	1997	95.4	CAPP	142.8
EDGEWATER	1997	107.2	CENT ROCK	163.9
NEWTON	1998	105.0	ILB	134.0
SCHAHFER	1997	109.3	ILB	131.2

SOURCE: FERC FORM 423
NOTE: 1) ONLY PLANTS WITH PREVIOUS SPOT PURCHASES OF PRB COAL AND SPOT PURCHASES OF NON-PRB COAL IN 1997 SHOWN
2) Price is in Cents Per MMBTU

Thus, the amassing of all sorts of “physical characteristics” is critical to determining the lowest *effective generating* cost at individual coal plants, as is evidenced by the use of quantitative impact models and the existence of numerous plants that continue to purchase higher *delivered* cost coals. Mr. Evert’s strong opposition to the evaluation of such key variables and embracing of textbook themes such as “supremacy of the marketplace” suggests that he has little or no experience in coal market analysis.

Throughout his Verified Statement, Mr. Evert spends considerable time advancing his primary argument, that the NPRB region is very different from the SPRB region. He spends

more than half of his report detailing the history and growth of the SPRB region. Most industry participants are well aware of the rapid growth of the SPRB region over the years. It is true that SPRB coal has invaded NPRB markets where NPRB's transportation advantage is slim or holds no advantage. Nonetheless, NPRB coal production, particularly compliance coal production, is growing. NPRB coal production increased from 36.9 million tons in 1991 to 40.8 million tons in 1997 (1998 is shaping up to be a record year as the state of Montana is projecting 42 million tons of production). Significant new markets for Montana coal, particularly compliance coal, continue to be opened in regional markets (South Dakota, Manitoba, and Kansas) as well as in distant markets such as Mississippi (Table 3). The NPRB region is far from drying up and being blown away by SPRB coal. However, as explained by Dr. McMahan at page 3 of his April 1998 verified statement, unless the Ashland area compliance coal reserves are developed, Montana's existing compliance coal mines will not be able to meet the demand for such coal by 2005.

B. Silverman Verified Statement

The Verified Statement of Dr. Silverman (Exhibit C to the NPRC Response) attempts to "place the current and recent post coal – utility – electric power industry in context for the discussion of Montana's coal future." See page 1. Dr. Silverman, like Mr. Evert, makes no mention of ever having been responsible for purchasing or selling coal in his distinguished career. Dr. Silverman tries to place the Montana coal industry in the context of overall U.S. energy supply and demand. However, Dr. Silverman makes a number of incorrect statements that cast doubt over his knowledge of the intricacies of the coal marketplace.

- 1) On page one, paragraph three of his Verified Statement, Dr. Silverman states that "Recent history (1993-1997) shows . . . nuclear power rose from 2.0 BTU to 12.0 BTU". The Energy Information Agency (EIA) in their 1998 Annual Energy Review disagrees with Dr. Silverman's numbers. In Table 1-1 titled "Energy Overview: Production of Energy from

Nuclear Sources,” the EIA shows US nuclear energy generation increasing only 2.6% from 6.52 QBTU in 1993 to 6.69 QBTU in 1997. Dr. Silverman’s nuclear generation figures are nowhere near those of the US Government. The degree of error, in both years, are multiples off of the correct figures, giving rise to the perception that the author is unfamiliar with the relative components of the US energy industry.

- 2) In the same paragraph, Dr. Silverman states “Recent history (1993-1997) shows U.S. coal production at 14 Quad BTU in 1993, rising to 23 Quad BTU in 1997, a 33% gain. During this period Montana coal production has been relatively stagnant.” Dr. Silverman has both a mathematical error (an increase from 14 QBTU to 23 QBTU would equate to a 64% increase, not a 33% increase as stated) and an error in his data. Dr. Silverman does not state the source of this data, or any other data contained in his Verified Statement. The 1998 Annual Energy Review published by the EIA quantifies U.S. coal production for the years 1993 to 1997. According to Table 1-2 of the 1998 Annual Review, U.S. coal production in 1993 was 20.221 QBTU and increased to 23.173 QBTU in 1997, resulting in an increase of 14.6%, not the 33% Dr. Silverman claimed. During the same four-year time period, Montana coal production increased from 35.9 million tons to 40.8 million tons, a 13.4% increase as reported by the Montana Bureau of Mines and Geology. Therefore, Montana coal production has increased significantly during the period 1993 to 1997, at a rate just below the national coal production rate. It is not stagnating as Dr. Silverman erroneously states. However, as described above, most of that Montana coal production has been compliance coal. Unless new Montana compliance coal mines are developed in the near future, Montana compliance coal production will not be sufficient to meet demand.
- 3) On page one, paragraph four of his Verified Statement, Dr. Silverman states that “Coal total

import for 1997 were only 2.0 QBTU or 10% of consumption". Review of EIA Table 1-4 shows that coal imports to the U.S. in 1997 totaled 0.19 QBTU, or less than 1% of all coal consumed in the U.S. Mr. Evert's incorrect figure is more than 1500% larger than the actual figure.

- 4) In the last paragraph on page 1, Dr. Silverman states "... the cost of electricity, on average, has been dropping nationwide over the last three years. Today average cost to the retail customer is about .5/kwh and on average reflects retail prices for a very long time." His first statement regarding prices is not true. Average nationwide retail electricity prices as reported by the EIA in Table 8-13 of the 1998 Annual Energy Review have remained stable (neither rising nor dropping), with prices at 6.9 cents/kwh for each of the last five years.
- 5) On page two, paragraph four, Dr. Silverman states that "Of all the coal used to generate electric power, more than 90% is of bituminous rank and an ever increasing portion of the coal of choice due to low sulphur content and medium to high energy content." This statement is incorrect. Approximately 56.5% of all coal used to generate power in 1997 was of bituminous rank according to coal purchase reports (Table 5, volumetric basis). Sub-bituminous coal from the Powder River Basin regions of Wyoming and Montana alone was responsible for one-third of all power generation on a tonnage basis. This figure has increased substantially in recent years, and all signs point to sub-bituminous coal increasing its share of the power market.

TABLE 5
1997 UTILITY COAL PURCHASES BY SUPPLY REGION AND COAL TYPE

MINE SUPPLY REGION	COAL TYPE	TONS (000)	% OF TOTAL
APPALACHIA:CENTRAL	BITUMINOUS	170,484	19.4%
APPALACHIA:NORTHERN	BITUMINOUS	120,978	13.8%
APPALACHIA:SOUTHERN	BITUMINOUS	16,978	1.9%
IMPORTS:N/A	BITUMINOUS	4,899	0.6%
MID-CONTINENT:ILLINOIS BASIN	BITUMINOUS	99,675	11.4%
MID-CONTINENT:INTERIOR	BITUMINOUS	647	0.1%
WESTERN:CENTRAL ROCKIES	BITUMINOUS	39,609	4.5%
WESTERN:FOUR CORNERS	BITUMINOUS	37,165	4.2%
WESTERN:RATON/CANON CITY	BITUMINOUS	509	0.1%
WESTERN:WASHINGTON	BITUMINOUS	4,427	0.5%
BITUMINOUS SUB-TOTAL		495,371	56.5%
MID-CONTINENT:GULF LIGNITE	LIGNITE	50,899	5.8%
WESTERN:NORTHERN LIGNITE	LIGNITE	23,172	2.6%
LIGNITE SUB-TOTAL		74,072	8.4%
WESTERN:SOUTHERN WYOMING	SUB-BITUMINOUS	14,340	1.6%
WESTERN:NORTHERN FRB	SUB-BITUMINOUS	38,166	4.3%
WESTERN:SOUTHERN FRB	SUB-BITUMINOUS	255,579	29.1%
SUB-BITUMINOUS SUB-TOTAL		308,085	35.1%
TOTAL UTILITY COAL PURCHASES		877,527	

SOURCE: FERC FORM 423 REPORTS

NOTE: NON-UTILITY COAL-FIRED GENERATORS, WHICH COMPRISE LESS THAN 2% OF ALL COAL CONSUMPTION, ARE NOT INCLUDED IN THE ABOVE FIGURES

The above five items detail areas of Dr. Silverman's Verified Statement where the data are grossly wrong (by order of magnitude in some cases), mathematical calculations are wrong, and, as a result, the hypotheses are not supported. These types of errors continue through Dr. Silverman's discussion of the Duffield and Meher [sic] Report (January 1994). This 1994 report finds that the probability of holding a contract (maintaining a competitive advantage) is very sensitive to delivered price differences. This theory is very logical, and rational, however it excludes the impacts of coal quality and boiler characteristics which, as demonstrated above, have a profound impact on which coal provides the lowest cost electrical generation. By failing to recognize the importance of these parameters in determining the competitiveness of different coals into different markets, Dr. Silverman, Mr. Duffield, and Mr. Meher [sic] fail to comprehend the dynamics of rail transportation markets.

Dr. Silverman, Mr. Duffield, and Mr. Meher also fail to understand the differences between rail *costs*, and rail *prices*. On page 3, Dr. Silverman states "A reduction of approximately 130 miles in transport distance for Wyoming coal to the Northern Midwest states reduces the cost of transportation alone by \$1.60/ton or .10 cents MBTU." Although costs may be reduced as a result of the shorter rail distance (costs may be higher too, as the construction costs of the TRR need to be recovered probably through trackage fees which will apply over and above standard variable operating costs), BNSF is unlikely to immediately change its transportation rates to its shippers because most of those rates are contract rates. Moreover, BNSF will price its transportation services based on market competition. Dr. Silverman's statement is also incorrect because it assumes the BTU content of all coal is the same; this is not true.

The construction of the Tongue River Railroad will reduce the rail transport distance of Wyoming coal to Upper Midwest markets by 130 miles. The TRR will reduce the rail transportation distance of Decker and Spring Creek coal to Upper Midwest markets by more than 130 miles. Thus, a reduction in shipping distance will accrue to both Wyoming coal and Decker/Spring Creek coal, two regions that are already competing against each other today.

The Spring Creek and the Decker mines currently represent Montana's only compliance coal sources. They also produce approximately 65% of Montana coal that is currently shipped out of state. Whereas the Montana non-compliance mines will see their rail distance advantage reduced somewhat if TRR is constructed (the non-compliance mines will still hold a 200 mile distance advantage), their role in exporting coal from the state is small and diminishing. The Rosebud mine no longer serves out of state markets, instead it exclusively supplies the Colstrip plant. The Big Sky mine is exhausting its reserves and is projected to close within five years.

That leaves the Absoloka mine as the only coal mine that will see its 330 mile rail advantage over Wyoming mines reduced to a 200 mile advantage. Significant markets lie within 700 miles of Absoloka that it should be able to maintain. Bear in mind that Absoloka's competition will not only be Wyoming coal that will be 130 miles closer due to the TRR, but they will also face just as much, if not more, competition from the Decker/Spring Creek compliance coal mines, as well as the proposed compliance coal mines in the Ashland area.

The TRR is not a threat to Montana's coal future, but is a necessary key ingredient in maintaining and expanding the state's local coal industry. Simply stated, without the construction of the TRR (or any other rail project), the mines in the Ashland area will not be developed, as low cost rail transportation is a crucial component in shipping coal. Existing reserves at West Decker, Spring Creek, and Big Sky will be exhausted in the next decade. The TRR will allow rail access to the largest block of developable, low sulfur coal reserves in the U.S. Development of these reserves can replace and supplant the Decker/Spring Creek operations as they run out of economic reserves late in the next decade.

2. Comments of Mr. Mark Fix dated September 11, 1998

On page 3 of his comments, Mr. Fix raises two issues concerning Mr. McMahan's April 1998 verified statement. First, Mr. Fix criticizes Mr. McMahan for failing to compare Montana coal production costs to Wyoming production costs, which Mr. Fix believes are cheaper. It is true that current operating mines in Montana generally have slightly higher production costs than mines in the SPRB; however, the proposed mines in the Ashland area have more favorable stripping ratios that are similar to those found in the SPRB. Consequently, Ashland mine production costs should be similar to Wyoming coal production costs. In any event, any higher Ashland area coal production costs would be offset by the transportation advantage that NPRB mines enjoy over SPRB producers when competing into the Northern Tier markets.

3. Comments of Mr. Nick Golder Dated September 14, 1998

On page one of his comments, Mr. Golder states that "This proposed [Montco] mine was never a legitimate business plan for these reasons: (1) Very high operational costs since it would have to be done by truck and shovel; (2) The high-sodium coal would require a special boiler to burn it; (3) revegetation after mining was very questionable on the first five-year plan. . . ." Mr. Golder's first statement is wrong. Truck and shovel mines are not necessarily high cost operations. Quite the opposite, truck and shovel mines can offer very low mining costs and extreme flexibility in the mining operations. The most productive mine in the PRB region in 1997 was Peabody's Rochelle mine which is a truck and shovel operation and is known within the industry as having one of the lowest production costs in the Basin. Moreover, contrary to Mr. Golder's claims, a higher sodium content can be a very positive coal characteristic for certain utility boilers. In boilers designed for high sulfur Illinois Basin coal, the higher sodium content reduces the ash resistivity in electrostatic precipitators, allowing more complete ash capture and higher unit generation levels. In fact, some SPRB mines, such as Arch Coal's Black Thunder mine, purchase sodium carbonate and add it to their coal prior to shipment to enhance the performance of the coal with certain customers.

4. Comments of Ms. Andrea Knutson Received by Board on September 15, 1998

On page 2 of her Verified Statement, Ms. Knutson states "Even if other coal were developed in the [Ashland] area there are better ways to retrieve it". The only alternatives to rail shipment of coal are (1) waterborne means (if a navigable waterway is nearby; this is not a viable option for Ashland area mines) or (2) truck. Unit-train shipment are far superior in most instances to truck movements when the transportation distance exceeds 35 to 50 miles. It would require 650 trucks to transport the volume of coal that is shipped on one unit-train of coal carrying 13,000 tons of coal. Those trucks would consume approximately 100 times more diesel

fuel than the unit-train, and emit over 100 times more exhaust and particulate matter as the unit-train. The addition of literally thousands of heavily loaded trucks on the state and county roads of Montana would likely result in extreme wear of the road surface, and an increased likelihood of vehicular accidents. For the purposes of transporting coal from the region, unit-trains are environmentally, economically, and operationally superior to truck transportation.

5. Comments of Musgrave Ranch Dated August 31, 1998

On page 4, the members of the Musgrave Ranch comment: "With the coal market so soft, coal not being an environmentally sound fuel and the Decker mines in the process of phasing out, why is this railroad needed?" First, the term "soft" is vague in its use here. Coal volumes, particularly compliance coal volumes, from mines in Montana and Wyoming have been increasing in recent years. The average price in the two regions has been declining on a constant dollar basis since the first mines opened in the late 1960's as a result of increasingly efficient operations. Larger equipment and better planning have allowed mine producers to consistently hold the line on price increases. Moreover, contract coal prices are declining as long-term, above-market contracts are replaced with one to three year short-term contracts.

Coal-fired electric generation is the leading source of electric power in the U.S., comprising 56% of all generation sources (source: EIA). Low sulfur coal has become the fuel choice of an increasing number of utilities as they comply with increasingly stringent sulfur dioxide emission limits. Coal is a stable, low-cost generation source that is expected to further cement its position as a reliable source of electric generation. Despite additional environmental controls, US coal production is expected to increase from its current level of 1.1 billion tons annually, to 1.4 billion tons by the year 2015. 1998 Outlook published by RDI.

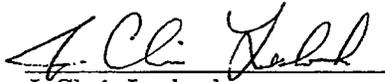
6. Comments of the V-C Cattle Company Dated September 11, 1998

On page 2 of its comments, the V-C Cattle Company raises a concern over competition that Wyoming coal supposedly will provide for Montana coal if TRR is constructed. However, as I previously explained in response to Dr. Silverman's comments, Wyoming coal and Montana coal are already competing today. Both source regions are growing, although Wyoming has grown faster for a variety of reasons. The TRR will reduce the distance to market for both Wyoming coal traveling through Montana as well as Spring Creek and Decker coal traveling Northeast through the state. Decker and Spring Creek coal will be able to pursue immediately and possibly capture new customers in the Northern Tier states as a result of the reduction in rail distance. The TRR also will promote the development of new low-sulfur coal mines in the Ashland area. These mines will not open without the construction of a new rail line to the area. Without the opening of new, efficient coal mines, NPRB compliance coal markets will be eroded by competing coal source regions.

VERIFICATION

Pursuant to 49 C.F.R. 1104.5, I, J. Chris Leshock, declare under penalty of perjury that the foregoing statement is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on October 31, 1998.


J. Chris Leshock

HADLEY

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

TONGUE RIVER RAILROAD COMPANY -- RAIL CONSTRUCTION
AND OPERATION -- WESTERN ALIGNMENT IN ROSEBUD AND
BIG HORN COUNTIES, MONTANA

REBUTTAL VERIFIED STATEMENT OF

DANIEL R. HADLEY

My name is Daniel R. Hadley. My business address is 730 East Main Street, Billings, Montana. I am President of Mission Engineering, Inc., which provides engineering consulting services to the mining and transportation industry. I have been President of Mission Engineering since its founding in 1989. Prior to managing Mission Engineering, Inc., I served as Manager of Design and Construction for Kaiser Coal Corporation from 1984 to 1987, where my responsibilities included managing studies to develop more efficient coal handling and transportation systems for enhancement of Kaiser's coal reserves. From 1980 to 1984 I was the Senior Design Engineer for IntraSearch Engineering, Inc., which developed the original 89-mile segment of the Tongue River Railroad from Miles City, Montana to two terminus points south of Ashland, Montana.

I have a Master of Science in Civil Engineering from the University of Utah and I am a registered professional engineer in Montana and several western states. During the past several years I have designed and prepared construction plans and specifications for various rail projects including the Star Lake Railroad Company, Albuquerque, New Mexico; the Santa Fe

Railroad Company, Los Angeles, California; the Peabody Rochelle Mine Project, Wyoming; the North Antelope Mine Project, Wyoming; the Montco Mine Project, Montana; the York Canyon Mine, New Mexico; the Sunnyside Mine, Utah; the State Railway of Thailand, Bangkok, Thailand; and the Tongue River Railroad Company ("TRRC") Project in Montana. Mission Engineering, in consultation with the Burlington Northern and Santa Fe Railway Company ("BNSF"), developed the Western Alignment. Mission Engineering also has consulted with Granite Construction Company, and the engineering firms of URS Greiner and Carter & Burgess, Inc. in developing a final alignment and associated construction costs for the Western Alignment.

Purpose

The purpose of this statement is to address certain issues raised in comments on the TRRC's application to construct the Western Alignment, an approximately 17-mile line of railroad in Rosebud and Big Horn Counties, Montana regarding vehicle and livestock crossing of the railroad right-of-way. My statement also responds to specific questions raised in the comments of Mark Fix to the Surface Transportation Board dated September 11, 1998.

Vehicle and Livestock Crossings

Several commenters raised questions about livestock and machinery crossings of the TRRC right-of-way. TRRC has proposed the use of multi-plate-corrugated metal pipe underpasses. These metal arch underpasses (12'-11" wide by 11'-3" high) are large enough to allow for the passage of cattle and small equipment such as pickups. "Private at-grade crossings" are proposed to facilitate vehicle movement at points along the right-of-way including movement of "oversize" equipment.

TRRC will work with the landowner to determine the placement of the underpasses. The plan is to place the underpasses at areas of low fill -- i.e. the point where the cut and fill meet and the width of the fill is the narrowest -- so as to shorten the length of the underpass and facilitate livestock moving through the underpass. This will provide for better

usage by cattle. Aerial photographs have been used to identify established livestock trails. If necessary, trails to the cattle passes will be graded to better facilitate movement by livestock.

Response to Some Issues Raised the Comments of Mark Fix dated September 11, 1998

Mr. Fix made specific comments on my April 22, 1998 verified statement, which was attached to the Western Alignment application. These comments are addressed in the following paragraphs. On pages 3 and 4, Mr. Fix discusses the “vertical curvature” of the Western Alignment. He claims to have found a design flaw in the Western Alignment that “proves that the TRRC is not designed for public need” because it either would not accommodate or would make more costly the hauling of return freight on the TRRC. Mr. Fix’s “discovery” is based on a misinterpretation of the discussion of the operating “design criteria” on page 4-29 of the Environmental Report which leads him to mistakenly believe the Western Alignment has a maximum grade greater than 1%, and, therefore, helper units would be required on some portions of the alignment.

Mr. Fix confuses “maximum vertical curvature” with “maximum grade.” Maximum vertical curvature describes the rate of change of grade, or how long the curve must be to change from one grade to another. For example if a vertical curve has an incoming grade of -0.25%, and an outgoing grade of +0.25%, the overall grade change is 0.50%. Assume for this example that the vertical curve would be considered to be a “sag curve” and the criteria of 0.05 feet of change per 100 feet distance applies. Therefore, in this example the vertical curve would need a length of 1000 feet in order to have a maximum rate of change of no more than 0.05 feet per 100 feet. Maximum grade refers to the steepest incline of the rail. The Western Alignment is designed to have a maximum grade of 1%, which means the incline of the rail can rise or fall no more than one foot in elevation for every one hundred feet of horizontal distance.

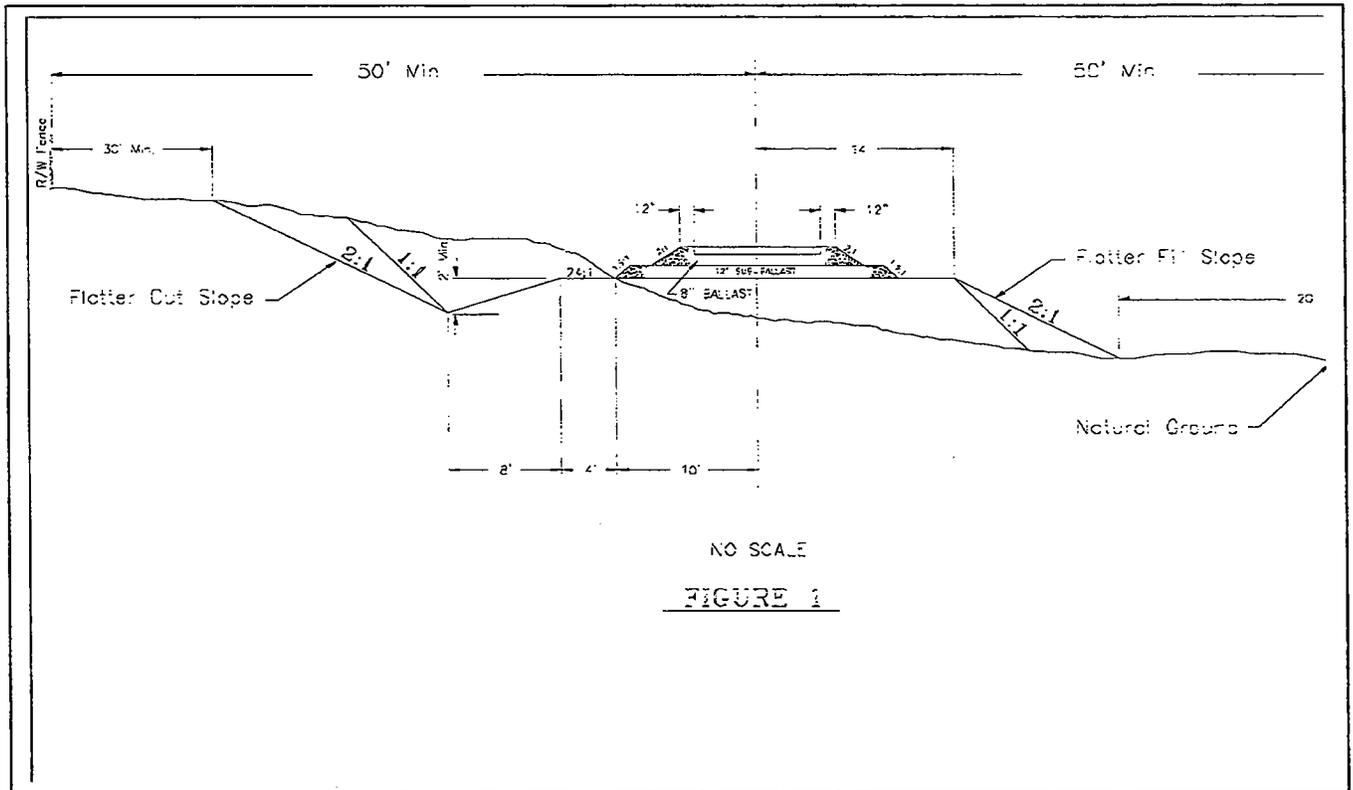
Contrary to Mr. Fix's assertions, the Tongue River Railroad is designed to operate with loaded coal trains, in both directions, without "helper" units. Helper units are needed on the Spring Creek Mine Spur near Decker because the **existing** trackage between the Decker mine loadouts and the end of the proposed TRR where it connects to the spur exceeds 1.1%. Once loaded trains reach the TRR, the overall grades do not exceed 1%. Coal trains are by far the heaviest type of freight that may be moved over the Western Alignment. Any other type of "common carrier freight" will move easily in either direction over the Western Alignment without helper locomotives.

On page 4 paragraph 2 Mr. Fix comments on the "cut and fill slope ratio" discussion in my April 22, 1998 verified statement and erroneously concludes that if the Western Alignment contains substantial amounts of "bedrock" that the amount of surface area disturbed by the Western Alignment will substantially increase. Contrary to Mr. Fix's assertion the more "bedrock" that is encountered on the Western Alignment the less surface area will be disturbed. As shown below, the harder and more stable the rock material the steeper the grade of the side slope, and the steeper the slope, the less surface area disturbed.

The flaw in Mr. Fix's analysis is shown in his September 11 comments and his letter of August 20, 1998, which he also references. Mr. Fix makes erroneous statements concerning how the steepness of the slope will affect the amount of surface area disturbed during construction. He then uses his faulty conclusions to claim that if the Western Alignment contains substantial amounts of "bedrock" the amount of surface area disturbed by the Western Alignment would increase "by as much as 41%." Mr. Fix states in his letter of August 20, 1998:

With the 1 foot rise in every 2 feet horizontally the surface area would increase by approximately 11% over all of the Western Alignment. If the grades are steeper than 1 foot rise for every 2 feet horizontally the surface area will be even more than 11% of the acreage quoted on Table 3-3 pg. 3-16.

In fact, the **opposite** of Mr. Fix's statement is correct – i.e. the steeper the grade of the side slope, the less surface area will be disturbed. A “1 to 1” slope will affect less acreage than a “2 to 1” slope due to the greater slope length of the “2 to 1” slope. Figure 1 shows how the “steeper” “1 to 1” slope creates less land disturbance than a “flatter” “2 to 1” slope.



Results of the geotechnical investigations may identify some areas on the Western Alignment with poor or unstable soils, which may require the design of flatter slopes, but these would be in isolated cases and would not represent the typical situation. Where harder, more stable rock material is concentrated, many of the cut slopes could be between 1.0 to 1 and 1.5 to 1 ratios. Contrary to Mr. Fix's assertions, having more stable rock material in the right-of-way is good. If more bedrock is encountered, less acreage -- not more -- than the average ratios currently projected will be effected by the Western Alignment.

On page 4 paragraph 3, Mr. Fix erroneously claims that the grade on the Western Alignment is likely to be washed out by the creeks its crosses and that the design of the drainage culverts do not consider the 50 and 100 year flood events. As explained in my April 22, 1998 verified statement and expanded on here, the Western Alignment has been designed so that the water will not compromise the integrity of the embankment during a 100-year flood flow. Moreover, as explained below, the culvert designs do include consideration of the 50 and 100 year flood events.

Mission Engineering undertook the following steps to address the integrity of the track during various flood events up to and including a 100 year flood event. (A 100-year flood event is a flood that is statistically likely to occur once in every one hundred years). Specific hydrologic calculations and designs were conducted for each of the drainages crossed by the railroad during preliminary engineering and design. The hydrologic designs follow present standards for highway and railway design. These calculations and analysis will be further refined during final design to insure protection of the watershed, stream profile and the railway embankment. These methods are standard engineering practices for the design of railway or highway systems. The drainage system for the railroad is designed so that water will not overtop

the track during a 100- year flood event.

The Western Alignment's only crossing of the Tongue River will be bridged with a structure approximately 400 feet long. The structure is being designed to safely pass the 100-year flood, while creating no additional elevation in the upstream water surface profile.

In addition to protecting the integrity of the railroad track, the culverts were designed to reduce scouring and erosion. For example, the design for the culverts requires placing and sizing of the culverts to limit the velocity of the water coming out of the culvert, which in turn will limit the amount of sediment that enters the river. Based upon flood flow determinations for Southeastern Montana and standard engineering practices, corrugated metal pipe (CMP) ranging from 24 inches to 120 inches in diameter will be used. Where particular fills are not high enough to cover the "design flood" pipe diameter, multiple pipes of smaller diameter were proposed to carry the required flood flows. The pipes were designed to pass the 10-year peak with no headwater at the entrance, and to safely pass the 25-year peak with one-pipe-diameter of headwater at the entrance. During 50 and 100 year floods events there may be a back up of water in the drainage area from a 50 or 100-year flood that would drain down to normal stream elevations within several hours.

On page 4, paragraph 4 Mr. Fix incorrectly assumes that the vehicle underpasses will not meet state minimum height requirements of 13 feet, 6 inches. In situations where the TRR will bridge over or under a public right-of-way, Montana Department of State Highway Specifications will be met. With the present design profiles, all of the "Public Grade Separated Crossings" for the TRR exceed 17 feet in height. The measurements Mr. Fix refers to are for private passage under the railway embankment, which are not subject the Department of State Highway requirements.

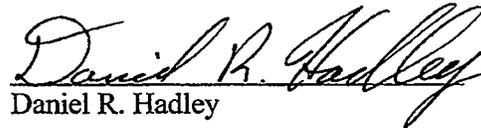
On page 4 paragraph 5 Mr. Fix asked about the placement of the yard track and terminal facilities. Currently sidings are proposed to allow for staging of trains entering and exiting the main BNSF line at Miles City, which is not part of the Western Alignment. These sidings will be offset approximately 15 to 25 feet from the main line and will fall within the proposed right-of-way.

This concludes my verified statement.

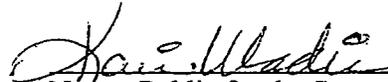
Daniel R. Hadley

STATE OF MONTANA)
) ss:
COUNTY OF YELLOWSTONE)

Daniel R. Hadley, being first duly sworn, deposes and says he has read the foregoing statement, knows the contents thereof, and that the same are true and correct as stated.


Daniel R. Hadley

SUBSCRIBED AND SWORN TO before me this 29 day of October 1998.


Notary Public for the State of
Montana.
Residing at Billings
My commission expires 12052001

SEAL

WALDHAUSER

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

TONGUE RIVER RAILROAD COMPANY- RAIL CONSTRUCTION
AND OPERATION – WESTERN ALIGNMENT IN ROSEBUD AND BIG HORN
COUNTIES, MONTANA

VERIFIED STATEMENT OF
EDWARD F. WALDHAUSER

My name is Edward F. Waldhauser and my business address is 1440 Grand Avenue Billings, Montana. I am Vice President of DuBray Land Services, Inc. (DuBray). As Vice President I have directed project management of every project undertaken by DuBray since November 1986. Included in these projects have been appraisal and acquisition of right of way for Montana Department of Transportation, Idaho Department of Transportation, Federal Highway Administration and various cities and counties. I have also managed the acquisition of right of way on several hundred miles of oil and gas pipelines and fiber optic cable. I serve as DuBray's subject matter expert on the Uniform Acquisition Act. Prior to joining DuBray I worked for twenty-five years with the State of Montana Department of Transportation as a Right of Way Agent. I performed complicated appraisal acquisitions for partial and full acquisitions for various highway right of way projects throughout the State of Montana. I have extensive experience in appraisals, acquisitions, planning, and relocation assistance and condemnation functions. I am senior member of the International Right of Way

Association. I have served as an expert witness in several jurisdictions. I am a graduate of Billings Senior High School and several technical training courses including Appraisal Institute Courses I and II, IR/WA Courses 201 and 202, Montana Highway Department Course- Rural Appraisals, IR/WA Courses 101 – Basic Right of Way, IR/WA Course 601 – Environmental Considerations, FH/WA Review Appraisal Course, and Records Interpretation.

The Tongue River Railroad Company (TRRC) has retained DuBray to assist in the acquisition of right of way for the Tongue River Railroad (TRR). DuBray's work for the TRRC includes negotiation of access agreements for survey and exploratory work necessary to develop the legal descriptions for the right of way and preparation of detailed construction drawings. DuBray will also prepare the necessary negotiation documents and negotiate with the owners for the required right of way. As DuBray Project Manager for the TRR acquisition of right of way, I have supervised all of the DuBray agents involved in contacting landowners along the alignment. In some cases I have negotiated directly with landowners. I also have reviewed the standard access agreement for the surveys and other exploratory work in connection with the TRR.

Purpose

The purpose of this statement is to address certain issues raised in comments on the TRRC's application to construct the Western Alignment, an approximately 17-mile line of railroad in Rosebud and Big Horn Counties, Montana regarding access to land for surveys and exploratory work necessary for the acquisition of right of way.

Type of Land Right Sought

In negotiations with private landowners for the TRR right of way, DuBray intends to acquire a fee simple interest for the required right of way. In my experience a fee simple interest is not unusual when the right of way would prevent the surface use of that right of way. An easement is typically used when the landowners would still have use of the surface of the land during the easement. If only an easement is granted, then the landowner would be required to pay the taxes on the land during the life of the easement. If a fee simple were granted to the railroad, then the railroad would be responsible for the property taxes.

Appraisals of Right-of-Way

All appraisals are conducted by a third party appraiser, who is a private individual not associated with the TRRC.

The appraisal preparation, documentation and reporting must be in conformity with the standards and practices of the industry according to Uniform Standards of Professional Appraisal Practice (USPAP).

In determining the value the appraiser should, assuming access is available, go on each property to view and take into consideration all factors related to operation of property, including, but not limited to land use, water sources, access for both vehicles and livestock, layout of pastures and fields, and site improvements.

The appraiser would then take all of these factors into account to reach a determination of before and after value as well as compensation for the acquisition and diminution in value to any remaining property, if any, is caused by the taking.

In some instances it will be necessary for the railroad to recognize the need to perpetuate the use of certain property. For example, if the railroad would cause a livestock water source to be on the opposite side of the right of way from the pasture land it serves, then the railroad could re-establish a water source for the part of the pasture land that is separated by the right of way by piping, creating a new source or providing different access. TRRC would perform this work and the work to be performed would be recorded in writing during the negotiations for the acquisition of the right of way. DuBray agents have told landowners to provide information related to certain issues, such as location of a water source and fencing, to the third party appraiser so that they can be properly considered in the appraisal. In my experience, this is standard practice in the acquisition of agricultural land for right of way.

Upon completion of appraisals they are submitted to a third party review appraiser who is also a private individual not associated with the TRRC. This person is responsible for reviewing the appraisal to determine whether the appraisal is adequately supported, whether it complies with recognized appraisal principles and practices, and whether it conforms to governing legal premises as prescribed by legal counsel.

In accordance with the foregoing, prior to the adoption of an appraisal of property, the reviewing appraiser will attach to the appraisal the written review report or review memorandum indicating the scope of his review and supporting the action recommended.

At the time of purchase of the right of way the landowner will be given a written offer and summary statement showing the amount of compensation and current sales in the surrounding area for support of values used. If the parties cannot reach an agreed

upon price then the matter may proceed to court for condemnation proceedings. Information on water sources, livestock underpasses and at-grade crossings would be provided to the court for consideration in determining the value of the land.

Livestock Passes

Each landowner has been given aerial photographs of the land that the alignment crosses. Proposed locations for livestock underpasses and at-grade crossings have also been shown on the photographs. DuBray agents have told the landowners that the locations are proposed based on information gained from aerial photos and USGS maps. TRRC will work with the landowner to determine the best location for the underpasses and at-grade crossings, and the final location will be determined from Engineering criteria.

As with the water issue example discussed above, the location of the underpasses and at-grade crossings would be put in writing as part of the contract for the land.

Impact of Delay of Construction of the TRR

Some parties have alleged that the amount of time during which the railroad has been under development has impacted their ability to make decisions about use of the land. However, DuBray agents have told the landowners, as explained above, that fencing, stock ponds and other similar improvements would be addressed. The railroad plans have not appeared to impact the ability to sell land. Land sales in the vicinity of the railroad have gone forward. Land in the area of the railroad right of way has sold at prices consistent with the sale of similar land not affected by the railroad right of way.

Access to Conduct Studies

As noted previously, DuBray has acted as an agent of the TRRC to gain access to the land along the alignment to conduct various studies and tests. A copy of the proposed access agreement used in discussions with landowners is attached as Exhibit A to this Statement.

This concludes my verified statement.

Edward F. Waldhauser
STATE OF MONTANA

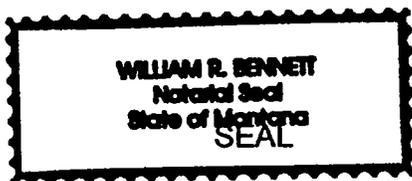
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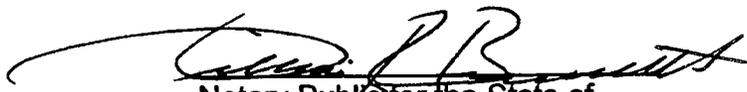
COUNTY OF YELLOWSTONE

Edward F. Waldhauser, being first duly sworn, deposes and says he has read the foregoing statement, knows the contents thereof, and that the same are true and correct as stated.


Edward F. Waldhauser

SUBSCRIBED AND SWORN TO before me this 29 day of October 1998.




Notary Public for the State of
Montana.
Residing at 1442 Grand Ave
My commission expires MAY 1, 2001

RIGHT OF ENTRY AND COOPERATION AGREEMENT

For and in consideration of the sum of One Thousand Dollars (\$1,000.00), the receipt and sufficiency of which is hereby acknowledged, the undersigned, herein called "Grantor: whether one or more, hereby grant to Tongue River Railroad Company, a Montana Limited Partnership, its successors and assigns, herein called "Grantee: a right to enter upon and to conduct the studies, surveys, tests and appraisals described herein, over, and across, upon and through the following described land located in _____ County, Montana (the "Property") to wit:

Land in Township _____ Range _____ Sec _____

This right to enter upon the described lands shall also include the right of access for necessary survey control and aerial monumentation on other lands owned by Grantor in _____ County, Montana. This right to enter and the right of access shall also extend to land owned by the United States of America or the State of Montana whether leased by Grantor or another.

PURPOSE: The purpose of this Agreement is to facilitate the final design and alignment of the Tongue River Railroad (the "Railroad").

GRANTORS COOPERATION: Grantor will cooperate in the conduct of the steps necessary for the final design of the Railroad, appraisal of real property affected by the construction of the Railroad.

DURATION AND EXTENT OF GRANT: The grant contained herein shall be for a period of twelve months from the date hereof. Grantee shall have the right to enter upon the Property to make such surveys, appraisals, cultural studies and boring, drive such test piles and make such soil bearing, seismic or other tests as deemed necessary to determine its suitability for construction and operation of the Railroad. Grantee shall notify Grantor at least 48 hours prior to each entry on the Property but Grantor may waive or reduce this requirement at any time.

DAMAGES: Grantee covenants that (i) it will not materially interfere with Grantor's use and occupancy of the Property, (ii) it will take all reasonable steps to minimize any disturbance to the Property in conducting the studies, surveys, tests and appraisals authorized herein and (iii) it will reimburse Grantor for any such damages it may cause and will restore the Property so far as possible to the conditions thereof prior to Grantee's entry to Grantor's reasonable satisfaction.

PAYMENT: If Grantor is more than one person, any payment due hereunder may be made directly to Grantor by delivery of the consideration stated above to any one of them.

MISCELLANEOUS: The terms, conditions, and provisions of the rights granted herein shall extend to and be binding upon the heirs, executors, administrators, personal

representatives, successors, third party contracts and assigns of the parties hereto. The rights granted herein may be assigned in whole or in part without the written permission of Grantor. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and either if the parties hereto may execute this Agreement by signing any such counterpart. All notices that are required under the terms hereof shall be delivered personally or mailed to the Grantor at _____ and mailed to Grantee at its office address, P.O. Box 1181, Billings, Montana 59103-1181. This agreement shall be construed in accordance with the laws of the State of Montana.

In witness thereof, the parties have executed this instrument this _____ day of _____, 1998.

GRANTORS:

GRANTEE:

As agent for
TONGUE RIVER RAILROAD COMPANY

By: _____
DuBray Land Services, Inc.

Tract No. _____

HIGDEM

October 21, 1998



Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

**Re: Finance Docket 30186 (Sub No. 3) Tongue River Railroad
Rail Construction and Operation
Western Alignment in Rosebud and Big Horn Counties, Montana**

Dear Mr. Williams:

My name is Garry M. Higdem. My business address is 24 San Juan Road Extension, Watsonville, California.

I am Vice President and Assistant Division Manager, Heavy Construction Division of Granite Construction Company. I have a Bachelor of Science degree in Civil Engineering from North Dakota State University., and I am a Registered Professional Engineer in the states of North Dakota, Colorado, and Texas.

Granite Construction Company has two operating divisions. The Branch Division, headquartered in Watsonville, California, operates 11 branch offices with 9 additional satellite operations in California, Nevada, Utah, and Arizona. The Heavy Construction Division (HCD), also headquartered in Watsonville, has regional operations and estimating offices in Dallas, Texas; Atlanta, Georgia; Tampa, Florida; and Odenton, Maryland. HCD operates nationwide and constructs highways, tunnels, dams, hydroelectric plants, major concrete structures, transit facilities, railroads, and airports.

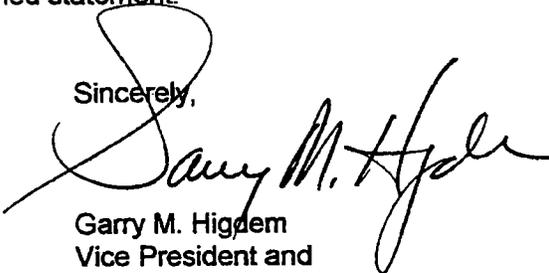
I have been continuously employed by Granite since 1985, and have been an officer of the company since 1996.

Heavy Construction Division
Box 50024
Watsonville, CA 95077-5024
(408) 722-2716
FAX (408) 722-4159

Granite did not perform any work at the new Denver International Airport in Denver, Colorado. Granite has performed construction contracts at a number of other airport facilities, as summarized in attached Exhibit 1. Granite was the recipient of the American Concrete Pavement Association's 1997 Pavement Award for Commercial and Military Airports for its work on the Runway 17L/34R Project at the Dallas/Ft. Worth International Airport, as noted in attached Exhibit 2.

This concludes my verified statement.

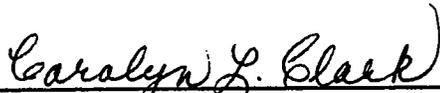
Sincerely,



Garry M. Higdon
Vice President and
Assistant Division Manager, Heavy Construction Division
Granite Construction Company
24 San Juan Road Extension
Watsonville, CA 95077

State of California
County of Monterey

SUBSCRIBED AND SWORN before me this 21st day of October, 1998



Notary Public for the State of California
Residing at: Monterey Co., California
My Commission Expires Oct 1, 1999





AIRPORT PROJECTS EXPERIENCE

CLIENT	CONTACT	DOLLARS	GRANITE BRANCH	JOB DESCRIPTION
Dallas/Fort Worth International Airport, Texas	Joe Mattingly Asst. Dir. of Development (214) 574-8938	\$15,737,000	Heavy Construction Division	Construction of new holding apron, taxiway
Dallas/Fort Worth International Airport, Texas	Joe Mattingly Asst. Dir. of Development (214) 574-8938	\$40,269,000	Heavy Construction Division	Construction of Runway 16L/34R and Associated Taxiways Including Demolition, Underground Utilities, Earthwork, Asphalt and Concrete Paving, Fencing, and Airfield Electrical Improvements.
Airport Authority of Washoe County, NV Reno Cannon Int'l Airport	Rod Savini Senior Airport Engineer (702) 328-6462	\$37,144,000	Reno	Reconstruction and Extension of Runway 16L/34R. Reconstruction, Marking and Lighting a new 9000-foot Concrete Runway and Associated Taxiways along with Drainage Improvements, a Perimeter Service Roadway and two BAK-14 Aircraft Arresting Systems.
Clark County, NV Department of Aviation McCarran International Airport	Ed Gill (Bechtel) Resident Manager (702) 739-5294	\$33,771,000	Reno	Overlay All Runways, Apron, etc.
U.S. Army Corps of Engineers- Altus Air Force Base Altus, OK	R.L. Hedrick Contracting Officer (918) 669-7269	\$28,330,000	Heavy Construction Division	Construction of assault strip and parallel runway, taxiways and aprons.
County of Sacramento, CA Sacramento Metro Airport		\$16,979,000	Sacramento	Terminal A Apron
Salt Lake Airport Authority Salt Lake Airport		\$13,843,000	Utah Operations	Runway 14/32 & 17/24 resurface
County of Sacramento, CA Sacramento Metro Airport	Bill Martens Inspector Co. of Sacramento (916) 648-0696	\$11,300,000	Sacramento	Runway, Taxiway, and Lighting Improvements
Airport Authority of Washoe County, NV Reno Cannon International Airport	Rod Savini Senior Airport Engineer (702) 328-6462	\$8,919,000	Reno	North Aircraft Parking/Taxiway B Reconstruction. Pulverization and Stockpiling Existing Asphalt Concrete; Subgrade Preparation, Drainage Improvements, Surface and Subsurface; ATPB, PCCP, AC Pavement and Marking, Curb and Gutter
Airport Authority of Washoe Co. Reno Cannon Airport	Rod Savini (702) 328-6400	\$8,819,000	Reno	Construction of New Taxiway, Including Two High-Speed Cross Taxiways; Several Low-Speed Cross Taxiways and Connections to Two Existing Runways.

**GRANITE CONSTRUCTION COMPANY
AIRPORT PROJECTS EXPERIENCE**

CLIENT	CONTACT	DOLLARS	GRANITE BRANCH	JOB DESCRIPTION
City of San Jose Dept. of Public Works	Mike Zimmerman Project Manager (408) 277-4337	\$7,484,000	San Jose	Runway Extension (1300 Ft.); Concrete and Asphalt Paving; Electrical
City of Oroville, CA Oroville Municipal Airport	Reinard Brandley Consulting Engineer City of Oroville (916) 922-4725	\$7,116,000	Sacramento	Construction of Runway, Taxiways, Aprons, and Roads
City of San Jose San Jose International Airport	Michael Go Project Manager (408) 277-4777	\$6,500,000	San Jose	Remote Parking Area, Including Retaining Walls, Underpass & Overpass; Parameter Road Widening; Drive Overlay.
City of Phoenix Deer Valley Airport	Mark Sutton Project Engineer (602) 256-2100	\$6,117,000	Phoenix	Sitework, Apron, T-Hangars and 9 Buildings
City of Santa Barbara Municipal Airport	Penfield & Smith Engineers Julio Gonzales (805) 963-9532	\$6,000,000	Santa Barbara	Concrete Aprons - Excavated, Recompacted & AC Paved Main Runway; Extend Existing Runway; Construct new Taxiway.
City of San Jose Department of Public Works San Jose Airport	Kent Dewell Deputy City Manager (408) 277-5986	\$5,300,000	Santa Cruz	Remote Parking Lot Earthwork, Demolition, Filtering of Existing Earthwork, Concrete Curbs, Asphalt Paving.
U.S. Army Corps of Engineers Air Force Plant 42 Runway		\$5,000,000		Runway Repair
Washoe County Airport Authority Reno/Cannon Airport	Jim Fereicci (702) 328-6460	\$3,594,000	Reno	Runway and Taxiway Construction
U.S. Air Force Luke AF Base	Larry Pomeroy Contracting Officer (602) 856-3059	\$3,462,000	Arizona	Asphalt Paving
Tucson Airport Authority, AZ Tucson International Airport	Elmer Carter Director (602) 573-8100	\$3,131,000	Arizona	Reconstruct and Repave Main Runway, PCCP and Asphalt Paving
Kern County Public Works Minner Field	Bill Souter Public Works (805) 861-2159	\$3,000,000	Bakersfield	Two Runway Reconstruction; Overlay; Taxi Runway Bridge; Taxi Runway Reconstruction; Miscellaneous Overlay Projects
Tucson Airport Authority, AZ Tucson International Airport	Elmer Carter Director (602) 573-8100	\$2,362,000	Arizona	PCCP Paving - Air Freight/International Aprons, Storm Drain Pipe

**GRANITE CONSTRUCTION COMPANY
AIRPORT PROJECTS EXPERIENCE**

CLIENT	CONTACT	DOLLARS	GRANITE BRANCH	JOB DESCRIPTION
Lander County, NV Battle Mountain Airport		\$2,358,000	Reno	
City of Lincoln Lincoln Municipal Airport	Reinard Brandley Consultant (916) 922-4725	\$2,200,000	Sacramento Branch	Grading and Paving
Sacramento County Placerville Airport	Reinard Brandley Consultant (916) 922-4725	\$2,200,000	Sacramento Branch	Grading and Paving
U.S. Air Force Aircraft Parking Apron, Tucson	Richard M. Deville Contracting Officer (602) 267-2841	\$2,174,000	Arizona	Construct Reinforced PCCP Aprons for Air National Guard
Naval Facilities Engineering NAF El Centro Helopad/Runway/Taxiway		\$2,106,000		
City of Sacramento Lincoln Municipal Airport	Reinard Brandley Consultant (916) 922-4725	\$1,500,000	Sacramento	Grading and Paving
City of Deming, New Mexico Deming Municipal Airport Improvements	Robert Richardson Engineer The Trebor Group (505) 527-1409	\$1,240,000	Arizona	Reconstruct Runways and Taxiways, Asphalt Paving, Storm Drain Pipe
Tucson Airport Authority Ryan Airfield	Elmer Carter Director (602) 573-8100	\$1,239,000	Arizona	Runway and Taxiway Paving, Asphalt Paving
U.S. Air Force Luke AFB & Gila Bend AFB	Larry Pomeroy Contracting Officer (602) 856-3059	\$1,179,000	Arizona	Asphalt Paving
Washoe County Airport Authority Reno/Cannon Airport	Jim Fereicci (702) 328-6460	\$1,168,000	Reno	Taxiway Shoulder Improvement
Douglas County Airport Authority Minden Airport	Chris Spandow or John Andrae (702) 328-6460	\$1,011,000	Reno	Runway Reconstruction
Stockton Municipal Airport Stockton County	Dan DeAngelis Airport Manager (209) 835-2266	\$1,000,000	Stockton	Grading, Paving, Storm Drainage

**GRANITE CONSTRUCTION COMPANY
AIRPORT PROJECTS EXPERIENCE**

CLIENT	CONTACT	DOLLARS	GRANITE BRANCH	JOB DESCRIPTION
U.S. Air Force Luke AFB	Larry Pomeroy Contracting Officer (602) 856-3059	\$968,000	Arizona	Asphalt Paving
Washoe County Airport Authority Stead Airport	Jim Fereicci (702) 328-6460	\$870,000	Reno	New Taxiway Construction and Runway Overlay.
Carson City Municipal Airport	Phil Marshall (702) 786-5873	\$758,000	Reno	Taxiway Apron Improvement
City of Lordsburg, New Mexico Lordsburg Municipal Airport Improvements	Keith Koler Engineer Armstrong Consulting (303) 242-0101	\$685,000	Arizona	Reconstruct Runways and Taxiways, Asphalt Paving
Pima County Avra Valley Airport Drainage and Apron Improvements	Michael Dupnik Engineer (602) 740-6410	\$622,000	Arizona	Airport Drainage and Apron Improvements, Asphalt Paving, Pipe
City of Watsonville Watsonville Municipal airport	Jim Summerville (408) 728-6047	\$400,000	Santa Cruz	Concrete Paving, Apron; AC Overlay Taxiway.
City of Modesto Modesto Airport	Howard Cook Airport Manager (209) 577-5318	\$300,000	Stockton	Grading and Paving
City of Truckee Truckee Airport	Dick Pegg Chief Engineer (916) 587-4119	\$286,000	Reno	Taxiway Reconstruction
U.S. Air Force USPFO, Repave Munitions Yard	Richard Deville Contracting Officer (602) 267-2561	\$243,000	Arizona	Asphalt Paving and Grading
City of Los Angeles Department of Airports Palmdale Regional Airport	Dan Malloy (213) 646-2268	\$147,000	Palmdale	Asphalt Overlay
City of San Jose, CA San Jose International Airport	Manager (408) 277-4777	\$113,000	San Jose	Airport Parameter Access Road

**GRANITE CONSTRUCTION COMPANY
AIRPORT PROJECTS EXPERIENCE**

CLIENT	CONTACT	DOLLARS	GRANITE BRANCH	JOB DESCRIPTION
City of Tucson, AZ Tucson Municipal Airport (Numerous Projects)	Elmer Carter (602) 573-8100	1) \$ 1,200,000 2) \$ 1,500,000 3) \$ 256,000 4) \$ 457,000 5) \$ 200,000 to \$1,500,000 Various Projects	Tucson	Numerous Projects, including: 1) Exit Taxiways and Markers; Construct 2 High Speed Taxiways. 2) Public Entrance and Exit Roadways; Entry/Exit Bridges and Roadways at Main Entrance. 3) Ryan Field - Construct Taxiway Improvements, Drainage and Shoulder Work. 4) Grading and Paving. 5) Prior to 1985 - Runway Extensions; Terminal Parking Lot; Deplaning Roadway; Friction Course; Paving and Grading.
United Parcel Service Sparks Facility (Two Projects)	1)Clark & Sullivan Frank Arcularious (702) 355-8500 2)Craig Burton	1) \$500,000 2) \$350,000	Reno	1) Base Rock and AC Paving 2) Parking Area for Trucks
Monterey Peninsula Airport District Monterey Airport (Numerous Projects)	Sherman Low Neill Engineering (408) 624-2110	1) \$ 741,000 2) \$ 240,000 3) \$ 517,000 4) \$ 389,000 5) \$ 1,015,000	Monterey	1) Resurface Runway, Paving 2) Aprons & Taxiways Grading; Storm Drain; Electrical; Paving 3) Safety Area Improvements; Grading Base Paving 4) Parallel Runway; Grading; Storm Drain; Electric; Paving 5) Runway Extension; Grading; Storm Drains; Electric; Paving

Granite Wins 1997 Pavement Award for Commercial & Military Airports

Granite Construction Company of Watsonville, California, was recently named winner of American Concrete Pavement Association's 1997 Pavement Award for Commercial and Military Airports.

American Concrete Pavement Association

Project Information

- **Project:**
Runway 17L/34R, Dallas/Fort Worth International Airport
- **Duration:**
1995 - 1996
- **Value:**
\$40,269,000
- **Owner:**
Dallas/Fort Worth Airport, Airport Development
- **Engineer:**
Huitt-Zollars Inc., Dallas, TX

Increasing Productivity

In a 431,000-square-yard project that took only 15 months to complete, Granite placed pavement concrete on a lean-concrete base, achieving an average profile index of 2.2 inches per mile for the airport's 8,500 foot runway and 25,500 feet of taxiways. To increase productivity, the world's largest portable batch plant, Granite's twin 15-cubic-yard plant was utilized. Also, two conventional placer/spreaders were linked in the paving process, creating a 37-foot-wide placer with a capacity of 600 cubic yards per



Award Winner: A precise pavement profile and formal partnering made the Dallas/Fort Worth Runway 17L/34R project a winner for Granite Construction Company.

hour. During the paving, four elevation sensors transferred grade information to hydraulic cylinders on the paver to automatically and continuously adjust vertical grade. As a result, for an average pavement thickness of 18 inches, the standard deviation was only 0.25 inch.

The construction of this new runway (and) the supporting taxiway system... have been performed in a professional and efficient manner under a very demanding schedule.

— John LaRue
Director, Airport Development

Partnering and Teamwork

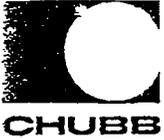
Formal partnering was an integral part of the project and is credited for resolving difficult issues.

Construction began in July 1995, with excavation of approximately 750,000 cubic yards of material, followed by grading, water injection, placement of lime-treated sub-base, and placement of reinforced Portland cement concrete pavement.

Since approximately 10 percent of the construction was accomplished inside of the Airport's Air Operations Area, close coordination with the client's Air Operations Department was critical to ensure safe operations and no interruptions to air traffic. Flight checks took place less than a year from project start, and with final commissioning, D/FW International Airport's seventh runway made it the most active airport in the world for takeoffs and landings.

GRANITE
CONSTRUCTION
COMPANY SINCE
1922

PHILLIPS, JR.



CHUBB GROUP OF INSURANCE COMPANIES

Suite 1500, Two Embarcadero Center, San Francisco, CA 94111
Phone: (415) 989-3000 • Facsimile: (415) 397-9575

FEDERAL INSURANCE COMPANY

October 22, 1998

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

**RE: FINANCE DOCKET 30186 (SUB NO. 3) TONGUE RIVER RAILROAD
RAIL CONSTRUCTION AND OPERATION
WESTERN ALIGNMENT IN ROSEBUD AND BIG HORN COUNTIES, MONTANA**

Dear Mr. Williams:

My name is William Phillips, Jr., and I am the San Francisco Regional Surety Manager for **FEDERAL INSURANCE COMPANY**. I have a Bachelor of Science degree in Mathematics from Wake Forest University and have been employed in the Insurance & Surety industry for 11 years, the past five years with **FEDERAL INSURANCE COMPANY**. As my office serves as the underwriting branch for the **GRANITE CONSTRUCTION COMPANY** account, I would offer the following information for your benefit.

FEDERAL INSURANCE COMPANY has been a leader in the surety bond industry for over 100 years, and our current Department of the Treasury underwriting limitation is \$255,512,000. Our A.M. Best rating is "A++ (Superior)," the highest possible rating from this insurance industry rating company.

The **FEDERAL INSURANCE COMPANY** has been privileged to execute surety bonds for **GRANITE CONSTRUCTION COMPANY** since 1926. During that time, we have written individual performance and payment bonds in excess of \$200,000,000 on behalf of

GRANITE CONSTRUCTION COMPANY, and additionally, we have participated on joint venture bonds where the bond penalty for GRANITE CONSTRUCTION COMPANY'S portion of work exceeded \$300,000,000.

It is our understanding that completion of the captioned project will be guaranteed by a Performance Bond executed by a Corporate Surety in the full amount of the contract value. As is the case with all Performance Bonds, the bond will guarantee the faithful performance by the Contractor of all terms and conditions of the underlying contract. In the event of the Contractor's default, the surety becomes responsible for fulfilling the terms of the contract. There would be no recourse to any other party, including the taxpayers of the State of Montana.

This concludes my verified statement.

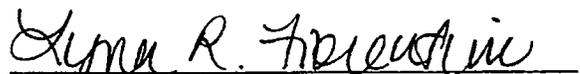
Very truly yours,
FEDERAL INSURANCE COMPANY

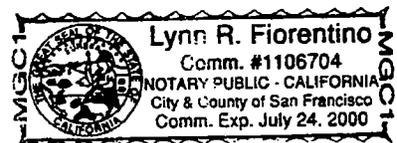


William Phillips, Jr.
Regional Surety Manager
FEDERAL INSURANCE COMPANY
Two Embarcadero Center, Suite 1500
San Francisco, CA 94111

State of California
County of San Francisco

SUBSCRIBED AND SWORN before me this 22nd day of October, 1998


Notary Public for the State of California
Residing at : SAN FRANCISCO, CA
My Commission Expires 1-24-00



APPENDIX B

APPENDIX B

SUPPORTING LETTERS FROM GOVERNMENT OFFICIALS

Larry Grinde, Majority Leader --Montana House of Representatives

Newell B. Anderson, Administrator for the Montana Coal Board -- Montana Department of Commerce

George Kurkowski, Mayor of Miles City, Montana

Town Council of Broadus, Montana

Dan Connors, and Duane Mathison, Custer County Commissioners

Murr Isaacs, President of Powder River County Planning Board

Victor L. Phillippi, Kyle Butts, and Donald R. McDowell, Board of County Commissioners -- Powder River County



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE LARRY GRINDE
MAJORITY LEADER

HOMEADDRESS:
ROUTE 3, BOX 3018
LEWISTOWN, MONTANA 59457
PHONE: (406) 538-3573

HELENAADDRESS:
CAPITOL BUILDING
HELENA, MONTANA 59620-0400

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street N.W.
Washington, D.C. 20423-0001

October 14, 1998

RE: Finance Docket 30186 (Sub No. 3)
Tongue River Railroad Co.; Rail Construction and Operation
Western Alignment in Rosebud and Bighorn Counties, Montana

Dear Mr. Williams:

My name is Larry Hal Grinde and I am a rancher in the vicinity of Lewistown, Montana. I have also been a member of the Montana Legislature since 1987 and I serve currently as the Majority Leader of the Montana House of Representatives. My mailing address is Route 3, Box 3018, Lewistown, Montana 59457.

I am writing to you today, and submitting this statement, to express my firm support in favor of the above-referenced application under review by the Surface Transportation Board. I have devoted many hours in becoming well acquainted with the Tongue River Railroad Company's rail transportation project, its purpose and its advanced stage of development. Not only does the TRRC project allow Montana to play an important role in our national energy policy, but it represents significant economic and employment benefits for our state and rural communities.

Because of the railroad's significance to this state and the utility marketplace, I believe it is imperative that the Surface Transportation Board act to approve the most advantageous routing possible. Mindful of the evidence presented, I believe the Western Alignment offers certain key advantages over the Four-Mile Creek Alternative. The Western Alignment provides the TRRC project with a routing that is not only shorter, but the grades



Mr. Vernon A. Williams

October 14, 1998

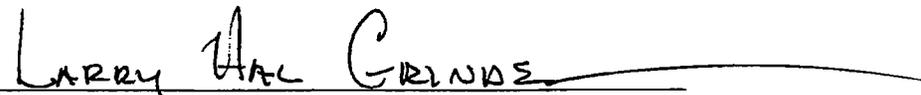
Page 2

are more favorable for improved operating efficiency over the long-run. Further, fewer landowners will be affected by this routing and far less acreage will be subject to disturbance. I believe these are important advantages to be considered and I am sure they will serve to enhance the competitive benefit of the rail line.

I am also aware of the concerns of opposition parties and the objections they have raised with regard to the Western Alignment. I believe such concerns and criticisms are based more upon their long-standing opposition to the entire project, rather than a concern over the Western Alignment in particular. The TRRC project and the potential for coal development in this area of our state has been studied and reviewed time and time again. The opportunities are here and now - and it is time that we move ahead in a responsible manner to complete the approval process and begin construction. I urge the Surface Transportation Board to set aside ongoing efforts to delay the construction of the railroad, consider the evidence, and act to approve the Western Alignment as expeditiously as possible.

I join with many others across this state that welcome the Tongue River Railroad. The Western Alignment is an important component in making this railroad as efficient and beneficial as possible. I respectfully request your utmost attention and consideration as we work to deliver this opportunity.

I, Larry Hal Grinde, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on October 14, 1998.


Larry Hal Grinde



MONTANA
DEPARTMENT OF COMMERCE

Local Government Assistance Division
1424 9th Avenue PO Box 200501
Helena, MT 59620-0501

Phone: (406) 444-3757
FAX: (406) 444-4482
TDD: (406) 444-2978

October 21, 1998

Surface Transportation Board
1925 K Street N.W.
Washington D.C. 2043-0001

RE: Finance Docket No. 30186, Sub. No. 3

Dear Board Members:

Two very real issues cannot be ignored in reference to this subject mentioned application.

1. Today, Montana's developed coal exists in a transportation disadvantaged environment.
2. There exists a significant reserve of super compliant coal in the area of this application, that without a transportation advantage may not be made available to U.S. consumers. This project deals affirmatively to reconcile both of these issues.

We, the members of the Montana Coal Board, encourage the members of your Board to look favorably on this application for clear reasons and with obvious benefit to not only Montana, but to the rest of this great country.

Thank you in advance for your positive review of this very important issue.

Sincerely,


NEWELL B. ANDERSON, Administrator
for the Montana Coal Board


NOTARY PUBLIC for the State of Montana
Residing at Helena, Montana
My Commission Expires August 31, 2002
10/21/98

CITY OF MILES CITY

P.O. Box 910
17 S. 8th Street
Miles City, Montana 59301
Mayor & City Clerk (406) 232-3492
Treasurer & Water Dept. (406) 232-3462
Engineering & Utilities (406) 232-3493
City Hall FAX (406) 232-2903



"Cow Capital of the World"

MAYOR:

George T. Kurkowski

COUNCIL PERSONS:

Sharon Kearnes
Doug Leidholt
Leroy Meidinger
William Melnik
Ruben Oberlander
Jerry Partridge
John Taylor
William Wolf

October 20, 1998

Surface Transportation Board
Washington, D.C.

Re: Finance Docket No. 30186, Sub. No. 3

Honored Board Members:

As Mayor of the City of Miles City, Montana, the terminal point for the Tongue River Railroad project, I want to endorse the Tongue River Railroad Company's application for approval of the Western Alignment route.

Miles City is the trade center of Southeastern Montana which comprises an area larger than the state of West Virginia. The completion of this project is most vital to our economic well-being. Opportunities for development of this magnitude for our section of this state are rarely available.

I feel that not only is this project important to our economy, but that it is in the best interest of the country as a whole. The development of the mines here in southeastern Montana is also necessary for the future of the nation's energy source. It is imperative that sources of domestic energy be developed for any future need. We should not have to rely entirely upon foreign sources of energy. The crisis of the 1970's is a prime example. And, because the quality of the coal to be produced at the mines serviced by this Tongue River Railroad project meet all standards established by the Clean Air Act amendment of 1990, it would be a national calamity to let this project wither away.

The Western alignment which the Tongue River Railroad Company seeks is vital if the company is to be able to successfully deal with the development of these coal reserves in a competitive manner. I urge you to look favorably upon their request.

Sincerely,

A handwritten signature in dark ink, appearing to read "George Kurkowski". The signature is fluid and cursive, written over a light-colored background.

George Kurkowski, Mayor

October 20, 1998

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad-Rail Construction
and Operation - Western Alignment

Dear Mr. Williams:

The Town Council of the Town of Broadus, Montana, supports the construction of the Tongue River Railroad.

The opportunity to develop the superb coal reserves in eastern Montana is possible with the Tongue River Railroad. Not only will this railroad provide a shorter and more efficient route for transporting coal from the Decker area, it will also provide a much needed boost to the economy of Eastern Montana through the construction phase and additional tax revenue afterwards. Several counties will benefit from the railroad and the possible opening of mines in the Ashland/Otter Creek Area. The railroad access will enable millions of dollars in coal tax revenue from the new mines for local governments and provide jobs and an economic boost to the surrounding communities. The Clean Air Act Amendments of 1990 is creating a demand that the coal in this area can fulfill.

Extensive environmental impact studies have been completed for the railroad project and coal development. The environmental effects have been addressed and evaluated. Appropriate environmental safeguards have been identified to minimize the effects to the environment.

We encourage the approval of this project soon so that construction can begin.

Sincerely,

Town Council of the Town of Broadus

Milton E. Andersen
Mayor

Richard Stump
Council President

Harlan L. Jones
Councilperson

Mark Wenzel
Councilperson

David Ray
Councilperson

SUBSCRIBED AND SWORN before me this 21st day of October, 1998.

Sandra L. Stevenson
Notary Public for the State of Montana
Residing at Broadus, Montana
My Commission Expires 11/16/99





County of Custer

Custer County Courthouse
1010 Main
MILES CITY, MONTANA 59301

October 26, 1998

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad-Rail Construction and Operation-Western Alignment in Rosebud and Big Horn Counties, Montana

Dear Mr. Williams:

Custer County supports the approval of the Western Alignment of the Tongue River Railroad project.

We believe this portion, as well as the total proposal, is essential in our nations efforts to provide low-sulfur coal in the marketplace and help offer economic stability to our region.

We appreciate Tongue River Railroad's efforts to work with Custer County and Miles City in this all important step towards positive development.

Vernon A. Williams
Page 2
October 26, 1998

Sincerely,



Dan Connors, Chairperson
Custer County Commissioner



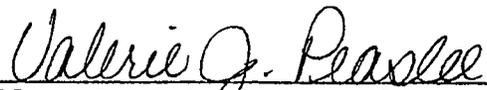
Duane Mathison
Custer County Commissioner

Janet Kelly, Absent
Custer County Commissioner

STATE OF MONTANA)
 :ss.
County of Custer

On this 26th day of October, 1998, before me, the undersigned Notary Public for the State of Montana, personally appeared DUANE MATHISON, known to me to be a Custer County Commissioner of Custer County, Miles City, Montana, whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of said CUSTER COUNTY COMMISSIONERS.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.



Notary Public for the State of Montana
Residing at: Miles City, Montana
My Commission Expires: 2-16-99

**POWDER RIVER COUNTY
PLANNING BOARD
PO BOX 270
BROADUS, MT 59317**

MEMBERS:

Murr Isaacs, Pres., Broadus
Marcus Stevens, Vice-Pres., Ashland
Jim Bowers, Broadus
Jim Collins, Biddle
Gene Smith, Olive
Dick Sturtz, Broadus
Phil VerWolf, Broadus

Phone: 406-436-2361
Fax: 406-436-2151

October 23, 1998

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad-Rail Construction and Operation - Western Alignment in Rosebud and Big Horn Counties, Montana

Dear Mr. Williams:

The Powder River County Planning Board supports approval by the Surface Transportation Board.

Tongue River Railroad Company (TRRC) and Burlington Northern Santa Fe Railroad (BNSF) engineers worked together to identify a more suitable route than the selected Four Mile Creek Alternative. The Western Alignment is the result of this effort and has several distinct advantages. The route is shorter and therefore affects fewer landowners, has improved environmental profile and operating economics. The Western Alignment provides for a more efficient means of transporting coal from the Decker area and the opportunity to open new coal production in the Ashland/Otter Creek area.

There have already been numerous environmental impact studies completed for the railroad project and coal development in this area. The environmental effects have been addressed for each phase of the project development and appropriate mitigation measures identified. We do not feel that completion of additional environmental studies is necessary.

The opportunity to develop eastern Montana's super compliant coal reserves exists with the TRR project. The Clean Air Act Amendments of 1990 are creating a utility coal market demand and the opportunity to open new coal production in southeastern Montana. This opportunity should not be lost. We encourage you to approve the Western Alignment quickly and allow construction to begin.

Thank you for the opportunity to express our views on the proposed alignment.

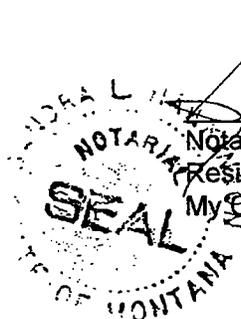
Sincerely,

POWDER RIVER COUNTY
PLANNING BOARD



Murr Isaacs, President

SUBSCRIBED AND SWORN before me this 23rd day of October, 1998.



Andrea L. Stewenson
Notary Public for the State of Montana
Residing at Broadus, Montana
My Commission Expires 11/16/99

BOARD OF COUNTY COMMISSIONERS

POWDER RIVER COUNTY
PO Box 270
Broadus, Montana 59317

Fax: 406-436-2151
Phone: 406-436-2657

Victor L. Phillippi, Broadus
Kyle Butts, Volborg
Donald R. McDowell, Broadus

October 19, 1998

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad-Rail Construction and Operation - Western Alignment in Rosebud and Big Horn Counties, Montana

Dear Mr. Williams:

We are writing to support your approval of the permit application by the Tongue River Railroad for the Western Alignment.

The Western Alignment is the result of cooperative effort by Tongue River Railroad Company (TRRC) and Burlington Northern Santa Fe Railroad (BNSF) to identify a more suitable route than the selected Four Mile Creek Alternative. The Western Alignment has several advantages; it is shorter and affects fewer landowners; provides safer operating conditions, improved environmental profile and improved operating economics and efficiencies. The Western Alignment provides for a more efficient means of transporting coal from the Decker area and the opportunity to open new coal production in the Ashland area.

Opponents of the TRR continue to request new Environmental Impact Statements on the TRR. However, the railroad project and coal development in this area have been studied many times. The numerous EIS documents have addressed the environmental effects of project development and have identified appropriate mitigation measures. Additional EIS is unnecessary.

The TRR will bolster the sagging economy of southeastern Montana. While many areas of the country are seeing economic growth, the declining agriculture economy is affecting the economy of rural Montana. The TRR will provide an opportunity for development of additional mines which will provide badly needed jobs, a tax base and revenue for local governments and an opportunity for our residents to remain in the community.

Utility coal market demand is driven by the need to burn low sulfur coal to comply with the nation's clean air standards. The opportunity to develop eastern Montana's super compliant coal reserves exists with the TRR project. This opportunity should not be lost. We urge you to approve the Western Alignment quickly and allow construction to begin.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
POWDER RIVER COUNTY

Victor L. Phillippi
Victor L. Phillippi

Kyle Butts
Kyle Butts

Donald R. McDowell
Donald R. McDowell



SUBSCRIBED AND SWORN before me this 19th day of October, 1998.

Sandra L. Hawkinson
Notary Public for the State of Montana
Residing at Broadus, Montana
My Commission Expires 11/16/99

APPENDIX C

APPENDIX C

SUPPORTING LETTERS FROM LANDOWNERS AND RANCHERS

Dave and Pat Gardner

Joseph P. Hayes

Albert Knobloch

Jack Knobloch Sr.

Jack Knobloch Jr.

Karen Knobloch Buffington

Kimberli Bement Knobloch

Majorie Fjell Knobloch

Glenn McKelvey

Jay Nance

Marcus L. Nance

George and Eva Rose Shy

*KP and Xan Stevens

Jacqueline Trusler

W.C. Trusler

* Original sent directly to Board. Appendix contains copy.

October 25, 1998

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 29243-001

Re: Finance docket 30186(Sub No. 3) Tongue River Railroad-Rail Construction and Operation-Western Alignment in Rosebud and Big Horn Counties, Montana

Dear Mr. Williams:

My family ranches in the Otter Creek Drainage of the Tongue River. We fully support the construction of the Tongue River Railroad(TRR). Even though the Western Alignment was not an original alternative, the route it proposes offers greater economy of operation, and is a safer alternative to the 4-Mile Creek route.

Any further study of the environmental impacts of the Decker to Miles City route would be a duplication of study already completed. The previous study certainly would not be outdated in a few years, especially if the purpose of the EIS was to identify environmental impacts and how they should be mitigated. If the study was good 3 years ago, the environmental impacts would not have changed in this short period of time.

It makes good sense to me, that if the Western Alignment offers a shorter, safer route that impacts fewer landowners, with less environmental impacts that are easier to address; that the route should be approved. If the builders of the TRR are willing to spend more for the construction of this new route, every one wins. That is, the railroad operates more efficiently with greater safety, while fewer landowners are impacted with less drastic mitigation efforts.

In your earlier decisions, your Board has determined the TRR project serves the public convenience and necessity. By approving this alternative, the TRR can do an even better job of providing high quality, low sulfur coal to the markets in the midwest. By making the deliver of coal more competitive, the consumer will benefit by paying less for the product the coal creates.

The economy of our region and our State will be positively impacted with the construction of this railroad. The power consumers of the Midwest will benefit with cleaner power generation. The governmental entities involved will have a greater tax base to provide needed services with. And finally the legitimate concerns of the impacted landowners will be addressed through the right-of way acquisition process, and the environmental concerns as identified in the earlier Environmental Impact Statement, will be dealt with as provided in the document you have already approved.

Please give this application your approval. It makes good sense for all of the public, both near and far.

Respectfully submitted,

Dave Gardner
Pat Gardner

Dave and Pat Gardner
HCR 89
Ashland, MT 59003

SUBSCRIBED AND SWORN before me this 26 day of October, 1998

Kathleen Gray
Notary Public for the State of Montana
Residing at Broadus, MT
My commission expires 1-15-99

October 25, 1998

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington DC, 20423-001

Dear Mr. Williams:

I am writing in support of the TRR. I have been involved in the Birney area as a landowner for many years and my family has resided there for over 107 years.

It is my belief that this project will benefit many people in the Tongue River and surrounding areas. Not only in jobs, but in severance taxes going to the state. That will filter down to schools, roads and all other phases of the impacted areas.

It seems absurd to me that a handful of ranchers who will suffer minimal impact can keep economic opportunity from literally two or three thousand people. In an area where jobs are far and few, I believe, this railroad is essential to this community, as well as the communities of Ashland, Lame Deer and Broadus.

After more than 22 years of doing business with Wesco (i.e. Montco) and now the TTR Co., I find their commitment to the environment, the community and my family exemplary. I wish the NPRC and these 12 or 13 ranchers would be held to the same standards as Wesco and TRR are held to. If this were the case, the NPRC, and these 12 ranchers would have little to say because the facts would be more important than fiction.

Please approve the western alignment.

Sincerely


Joseph P. Hayes



NOTARY PUBLIC for the State of Montana
Residing at Polson, Montana
My Commission Expires 7-22-2002

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, D.C. 20423-0001

RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad-Rail
Construction and Operation-Western Alignment in Rosebud and Big Horn
Counties, Montana.

Dear Mr. Williams:

I am writing in support of the Tongue River Railroad. I live and work on our family ranch north of Birney, Montana. The railroad runs approximately five miles across our place so naturally it is of interest to me.

The railroad would mean several things to this area and to southeastern Montana. In an area where there is a high unemployment rate and very few job opportunities the railroad would provide them. First, from the construction stage of the railroad; second, the operation and maintenance of the railroad; third, the possible development of the highly marketable coal found in the Tongue River basin. This coal is of high quality and low sulfur which meets the needs of today's markets.

We have seen the strain put on the coal market from the clean air standards and the utility deregulation. The producers of the non-compliance coal at Colstrip have already felt the effects of this and have had to cut back on production and lay off workers. The drop in

production has hurt the tax base and revenue in Rosebud County and the state of Montana. The railroad provides us with the opportunity to regain some of the tax base and revenue by making the Tongue River coal marketable and lowering the cost of Decker's coal to be more competitive in the changing market. If the railroad provides the opportunity to own a share of this market, then it would be well worth it.

TRRC has been very responsible in addressing the concerns of the people and the environment. I feel that TRRC has been very professional and thorough in developing their EIS concerning the railroad and coal development in this area. They have addressed all our concerns and have been very accommodating to work with as far as our ranch operation is concerned. I see no reason why the project should not move forward.

Albert Knobloch
HC41 Box 33
Birney, Mt. 59012

I, Albert Knobloch, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on Oct. 25, 1998.

Albert Knobloch

**Dernon R. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, D.C. 20423-0001**

**RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad-Rail
Construction and Operation-Western Alignment in Rosebud and Big
Horn Counties, Montana.**

Dear Mr. Williams:

**I am writing in support of the Western Alignment for the Tongue
River Railroad. The Tongue River Railroad should be as efficient, safe,
and as environmentally sound as possible. I believe the Western
Alignment is the best route to achieve these goals.**

**There seems to be a lot of concern over the impact of the
construction and operation of this railroad. I feel these concerns are
unfounded. The TRRC has had to do very detailed studies of the
environment to address these concerns in the filing of the EIS. The
environmental safeguard requirement necessary to build a railroad
far exceed any requirement related to other activities such as
agricultural practices, timber harvest, road building and related
activities, which have a similar impact on the Tongue River Valley.**

**On a more personal note, I believe the opportunities created by
the building of the TRR exceed the drawbacks to our ranch unit. The
division of our pastures could enable us to better manage our range**

resources, more efficient livestock production, better plant communities, and improved wildlife habitat.

Good paying, long term employment brought about by the TRR and related mine development will be a benefit to the whole area. A special opportunity will be afforded the young people who wish to remain in agriculture. Due to the highs and lows in the ranching business caused by market force and weather, outside employment may be the only way they can stay in ranching and in the community.

In closing, I believe not building the TRR will mean an end to most coal production in Montana other than the Decker area and a 100% guarantee that most new opportunities in the coal industry will be lost to individuals, communities, counties and the state of Montana.

Thank you for the opportunity to comment.

**Jack Knobloch SR.
HC 41 Box 33
Birney, Mt. 59012**

**I, Jack Knobloch Sr., declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.
Executed on Oct. 25, 1998.**

Jack Knobloch Sr.

**Dernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, D.C. 20423-0001**

**RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad-Rail
Construction and Operation-Western Alignment in Rosebud and Big
Horn Counties, Montana.**

Dear Mr. Williams:

**I have been a resident of Rosebud County and the Knobloch
ranch all of my life. My grandparents homesteaded and invested their
lives into our present ranch. The proposed Railroad will affect my
family directly. Because I have vested interest in the Railroad, I can
see the reality of improved economic status and improved tax
revenue. Access to neighboring cities and super compliance coal
reserves should serve as a prompt to develop the railroad. The new
railroad will also serve to improve the competitiveness of Montana's
coal industry. The economic benefits by far out weigh the cons by
creating a tax revenue and high paying jobs. The farmers and
ranchers that oppose the railroad will not have to change their way of
ranching. In reality, our way of ranching in Southeastern Montana
will stay the same with a few added benefits. Economic growth to
our region is dependent on the development of the Western
Alignment. Please consider my letter of support for the Approval of the
Western Alignment.**

**Jack Knobloch Jr.
HC 41, Box 11
Birney, MT 59012**

**I, Jack Knobloch JR., declare under penalty of
perjury that the foregoing is true and correct.
Further, I certify that I am qualified and authorized
to file this statement.**

Executed on Oct. 26, 1998.

Jack Knobloch Jr.

**Dernon R. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, D.C. 20423-0001**

**RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad-Rail
Construction and Operation-Western Alignment in Rosebud and Big
Horn Counties, Montana.**

Dear Mr. Williams:

Having been born and raised in Southeastern Montana, and living here most of my life, I am in support of the Western Alignment for the Tongue River Railroad. The Tongue River Railroad would greatly enhance the conditions of the people surrounding this project. First of all, the job opportunities would greatly improve. I have just reentered the job market and am finding it nearly impossible to find a job that will support myself and my children. I am presently employed part-time and finding it quite difficult to survive.

Second of all, our school systems are in dire jeopardy. This community does not have enough tax base to support our school system. The education of our children should be a top priority, but without the necessary funds, our school is severely lacking in academic support. Many parents are sending their children to Colstrip, Montana to give their children more academic opportunities. Colstrip has been able to succeed due to an added tax base from coal.

The opponents to the railroad have done everything to stop the

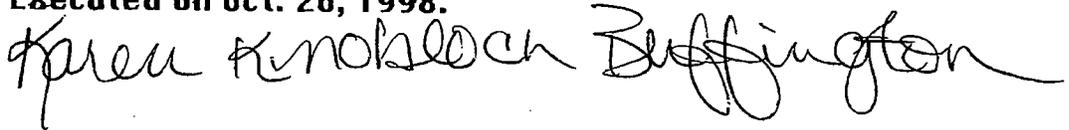
progress of our community. I feel that the development of the railroad and low sulfur coal would do so much good for our community. The environmental impact upon the land is minimal. Using Colstrip as an example, one can see the benefits to the land, the people, the county and the state.

In conclusion, please accept my support for the Western Alignment of the TRRC. Thank you for the opportunity to comment.

Karen Knobloch Buffington
HC 41
Birney, Mt 59012

I, Karen Knobloch Buffington, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on Oct. 26, 1998.

Handwritten signature of Karen Knobloch Buffington in cursive script.

**Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, D.C. 20423-0001**

**RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad-Rail
Construction and Operation-Western Alignment in Rosebud and Big
Horn Counties, Montana.**

Dear Mr. Williams:

**I have been a resident of the Northern Cheyenne reservation for
24 years. In 1994, I married and moved to the Knobloch ranch in
Birney, Montana. I see the pros of building a railroad in Southeastern
Montana. Our area has never seen the light of economic development.
The railroad will improve the tax revenue and create high paying jobs.
Not only will the Western alignment benefit the ranchers in our area,
but it will benefit the whole Southeastern part of the state. By
building a railroad closer to super compliance coal reserves and
hopefully prompting the development of new mines, the railroad will
boost our economic status. Some of the local ranchers are concerned
about environmental eye sores, but they themselves have created
some of their own. I am in favor of the Western Alignment. Thank
you for your time and please consider my letter of approval for the
Western Alignment.**

**Kimberli Bement Knobloch
HC 41, Box 11
Birney, MT 59012**

**I, Kimberli Bement Knobloch, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.
Executed on Oct. 26, 1998.**

Kimberli S. Knobloch

**Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, D.C. 20423-0001**

**RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad-Rail
Construction and Operation-Western Alignment in Rosebud and Big
Horn Counties, Montana.**

Dear Mr. Williams:

**I have lived on the Tongue River all of my 52 years in the Birney
community. My grandparents settled here in the early 1900s and both
my parents were born and raised here and raised their children in this
community. My husband was also born and raised here. His
Grandmother and father and uncles homesteaded just north of Birney.
We raised our family of five children here and two of the boys are
ranching with us still. One is married with children living on the
original place and the other is living on an adjoining ranch we
purchased back in '71.**

**As far as the railroad goes, I say let her come. We would
appreciate anything that would help the economy of our area. We
have been looking forward to a coal mine since this part of the
country was leased for coal. Jobs provided by the mining would
certainly give our children the opportunity to stay in this area and all
grandmas like having their grandchildren close enough to hug.**

Without the railroad I just don't think there would be much of a chance for that.

I don't understand why people are so afraid of change. The railroad certainly didn't hurt the ranches from Colstrip to Forsyth or all along the Yellowstone. Our youngest daughter lives at Chinook, Mt. and those ranches have trains going through there many times a day and they seem to get along. What is so special about the ranches on the Tongue River? We all love our land but how can we deny our many young people any opportunity to stay in the community and state they love? Ranching certainly can't employ them all.

**Marjorie Fjell Knobloch
HC 41 Box 33
Birney, Mt 59012**

**I, Marjorie Fjell Knobloch, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.
Executed on Oct. 25, 1998.**

Marjorie F. Knobloch

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad-Rail Construction and Operation-Western Alignment in Rosebud and Big Horn Counties, Montana

Dear Mr. Williams:

My name is Glenn McKelvey and I live approximately 6 miles south of Ashland, MONTANA along the Tongue River. My ranch property will be crossed by the Tongue River Railroad alignment about 1.5 miles north of Terminus Point 1 on the initial 89-miles of the railroad.

In 1977, my wife, Eva, and I entered into a surface lease agreement with the Montco partnership for the purpose of developing coal reserves under our ranch. Since that time, we have watched a continuous effort and millions of dollars being spent to develop a mine and rail system to transport this high quality coal to the market. We have seen both state and federal Environmental Impact Statements completed for the proposed mine, federal land management plans and EIS's related to the coal resources of this area, and several EIS documents completed for the rail transportation system.

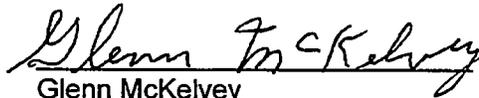
Each of these documents has found that mined land can be successfully reclaimed, that the coal should be leased for mine development, and that the need for rail transportation exists. The Western Alignment is another effort on the part of the project developers to address the environmental concerns raised by the opponents to these projects, while at the same time providing the most efficient means of transporting Montana's high quality coal to market.

It is time to move on and develop these important projects so that new job opportunities and tax revenues can come to southeastern Montana. The 1996 EIS

completed for the TRRC should be updated with the necessary information and the Western Alignment approved as soon as possible.

VERIFICATION

I, Glenn McKelvey, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement. Executed on October 22, 1998.

A handwritten signature in cursive script that reads "Glenn McKelvey". The signature is written in black ink and is positioned above the printed name.

Glenn McKelvey
HC 71, Box 1233
Ashland, Montana 59003

*Jay Nance
SH Ranch, Box 22
Birney, MT 59012
(406) 784-2440*

Mr. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington D.C. 20423-001

Dear Mr. Williams,

My name is Jay Nance and I am a cattle rancher on the Tongue River in southeastern Montana. I am writing in support of the Tongue River Railroad and additionally to support the Western Alignment. I have lived in this valley nearly all of my 54 years. I have seen many changes, but more change is needed. Things are not economically or socially well in our neck of the woods. The development of the Tongue River Railroad (TRR) would be the catalyst for economic development and positive change in this area.

I have neighbors who claim they can not live with a railroad traveling through their ranches. I find that position unacceptable. I think the larger problem is failing to recognize that our world extends far beyond our ranch boundaries. The world which exists beyond my ranch is burdened with 29% unemployment and 70% of the community living at or below poverty. The world beyond my ranch is impacted by fetal alcohol syndrome, crack babies, alcoholism, drug abuse, espousal abuse, depression, suicide, and all of the other painful effects of hopeless poverty. Although, I will have nearly six miles of the railroad going through my ranch, I feel that we can mitigate the impact to our ranching operation. I am willing to deal with the "negative" aspects of having a railroad run through my ranch, in pursuit of the greater gain for the entire community, namely increased job opportunities and economic development.

I feel that not only can we, as a community, live with the TRR, but that the railroad could serve as a beginning to the end of the economic dilemma we find here. Our area is natural resource dependent. Although, we don't have the options of tourism or manufacturing like Yellowstone Park or Detroit, MI, we are however sitting on top of billions of tons of super compliance coal. Since, we don't have a lot of development options to pick and choose from, it flies in the face of common sense to elect not to build the Tongue River Railroad.

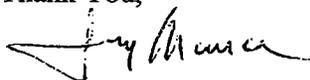
Opponents of this project are masters of misinformation and I would like to take this opportunity to make my thoughts clear on a number of issues.

1. Legitimate market studies claim and prove a demand for coal.
2. The Clean Air Act requires super compliance coal which is abundant along the route.

3. Public need has already been measured by the Surface Transportation Board.
4. The Environmental Impact Statement and other pertinent studies are current and sufficient.
5. The Western alignment is shorter, more efficient, and environmentally superior.
6. Opponents have delayed the project and now ask for enforcement of the three year construction window.

Thank you for your time and consideration of this issue and I hope for speedy and positive result for the people in this area by way of permission to build.

Thank You,



Jay Nance
Box 22
Birney, MT 59012

I Jay Nance declare under penalty of perjury that the foregoing is true and correct.
Further, I certify that I am qualified and authorized to file this statement.

Executed on Oct 22, 1998

Marcus L. Nance
SH Ranch, Box 22
Birney, MT 59012
(406) 784-2443

Mr. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington D.C. 20423-001

Dear Mr. Williams,

I am writing in support of the Tongue River Railroad, and particularly the Western Alignment. The Western Alignment is shorter, reduces the number of land owner affected, has an improved environmental profile, and has improved operating economics and efficiencies.

It might be important to note the governor of Montana, Marc Racicot, and the entire Congressional Delegation support this project. Other supporters of the railroad include BNSF Railway Company, David Burr of the Montana Taxpayer Association, David Owen of the Montana Chamber of Commerce, and numerous utility companies. Additional, numerous individuals, concerned citizens, and private landowners in this area also support this project.

I might mention that I am 82 years old and my family has ranched in this community for over 100 years. I see the railroad as beneficial to not only our community, but to the county and state.

Thank you for your consideration. I hope the Surface Transportation Board continues to see fit to grant Tongue River Railroad.

Sincerely,



Marcus L. Nance



I _____, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this statement.

Executed on 10/22/98

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

RE: Finance Docket 30186 [Sub No. 3] Tongue River Railroad-Rail Construction and Operation
Western Alignment in Rosebud and Big Horn Counties, Montana

Dear Mr. Williams:

We are writing this letter to ask you to approve the Western Alignment of the Tongue River Railroad. This is a necessity for the transportation of the high quality, low sulfur coal located in our region.

The economy of Southeastern Montana badly needs jobs, additional tax base and revenues. The tax base in our area is mainly agriculture and some timber.

We are 3rd generation ranchers who are struggling to stay in business. Our family would like to continue to be involved in agriculture. However, with the ever increasing taxes, operating expenses and unfair trade practices, it is doubtful if many young people will be able to remain in ranching or farming.. Our land covers some of the high quality coal. We would like an opportunity to develop this resource and market it.

When you consider all the benefits to our community, the State of Montana and the nation, that the TRR presents, we feel that the Surface Transportation Board should approve the Western Alignment quickly and then construction and development can begin.

Shy Ranch LTD
George and Eva Rose Shy
HCR 71-Box 1120
Ashland, Mt. 59003

Affirmed as Follows:

We, George and Eva Rose Shy, declare under penalty of perjury that the foregoing is true and correct. Further, certify that we are qualified and authorized to file this statement.

Executed on 10-21-98 (date)

George Shy George Shy

Eva Rose Shy Eva Rose Shy

Vernon A Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad-Rail construction and Operation- Western Alignment in Rosebud and Big Horn Counties, Montana.

Dear Mr. Williams:

This letter is in reference to the proposed Tongue River Railroad project in southeastern Montana.

We have a family ranching corporation in the Otter Creek area. We consider our area a "depressed area" in economic terms. Our portion of southeastern Montana over the past several years continues to have increased tax burdens and unemployment problems. With no economic development to alleviate these hardships, the problems will continue to rise. The Tongue River Railroad project, along with probable mining development would create opportunities for employment, tax relief and economic advancements. This would be a real boost for everyone in our area.

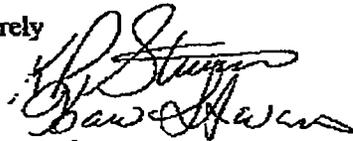
The coal in the Asbland area is very high quality, low sulfur coal. With our nation's concerns with clean air, and rightfully so, this southeastern Montana coal

needs to be utilized. The Tongue River Railroad would be the means for efficiently and economically transporting the coal.

We are of the understanding that the shorter Western Alignment route would effect less land ownership, be more environmentally sound and provide better operating efficiency.

In summary, the Tongue River Railroad is a means to help solve many, employment, economic and tax problems in southeastern Montana. We have an opportunity to keep people, which include our children, in our state instead of forcing them to leave for employment elsewhere. Montana has an opportunity, or obligation, to contribute to our nation's welfare. We need to move out of the past and progress into the future.

Sincerely



KP & Xan Stevens
PO Box 91
Ashland Mt. 59003



SUBSCRIBED AND SWORN before me this 30 day of October,
1998.

W. Wayne Wetherill

Notary Public for the State of Montana
Residing at: Big Horn, Montana
My Commission Expires January 25, 2001

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad-Rail Construction and
Operation-Western Alignment in Rosebud and Big Horn Counties, Montana

Dear Mr. Williams:

My name is Jacqueline Trusler and my mailing address is P. O. Box 6, Ashland, Montana 59003-0006. I am submitting this letter in support of the Tongue River Railroad's application for approval of the Western Alignment.

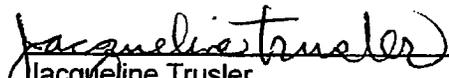
Based on the available information, the Western Alignment provides a much more efficient means of transporting high quality Montana coal from the Decker area mines and from new mines in the Ashland area. The Western Alignment is 12 miles shorter and has less grade than the alignment approved by the Surface Transportation Board in November of 1996.

I have been involved with ranching and the agriculture industry for many years and fully understand the necessity and importance of being able to incorporate efficiency into every day operations. I'm sure that the rail business is no different from agricultural, from the standpoint of having to operate efficiently and at the lowest cost.

The Ashland area unemployment rate is near the 20% level and many people live below a poverty level of income. New construction and operation employment opportunities will mean a great deal to this area. The time has come to move forward. I urge the Surface Transportation Board to expedite its approval of the Western Alignment.

Verification

I, Jacqueline Trusler, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Statement, executed on October 22, 1998.


Jacqueline Trusler
P. O. Box 6
Ashland, Montana 59003-0006

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad-Rail Construction and Operation-Western Alignment in Rosebud and Big Horn Counties, Montana

Dear Mr. Williams:

My name is W. C. "Billy" Trusler and my mailing address is P. O. Box 6, Ashland, Montana 59003-006. My family has owned and operated a ranch east of Ashland, Montana for over 110 years. I am submitting this statement in support of the Tongue River Railroad's Western Alignment application.

The Western Alignment will provide a much more efficient means of transporting high quality Montana coal from the Decker area mines and from new mines in the Ashland area. Once the rail system is approved and construction can begin, investment in new mine development, mine permitting and construction can commence.

In addition to our ranch operations, I have a excavation construction business and have been involved for many years with a number of construction projects in Ashland, in addition to having completed projects for Rosebud County and the U. S. Forest Service. As a result, I am familiar with the regulatory requirements and measures which are necessary to control sediment runoff and erosion during construction. These control measures have become commonplace on virtually all construction projects. In addition to controlling sediment loss into waterways, the control measures are necessary in order to maintain the integrity of constructed slopes and to prevent loss of the road bed and the investment made in that road bed.

Over twenty years ago we leased our ranch surface to the Montco partnership so that the underlying coal resources could be developed. Since the mid-1970's, millions of dollars and countless man-hours of effort have been invested in an attempt to develop rail infrastructure into this area so that these high quality coal reserves could be mined and transported to our nation's utility market. These developments efforts are repeatedly attacked by special interests who oppose development under any circumstances.

During this time period, many studies, management plans, and environmental impact statements have been completed by both federal and state agencies. Repeatedly, the studies conclude that the need exists for this coal to be developed, that the mined lands can be reclaimed successfully, and that the need exists for a rail transportation system to be constructed to serve the coal resources in this area. The public has participated fully in the processes which led to these findings.

The time has come to move forward. I support the Surface Transportation Board's position of supplementing the latest EIS document and urge the Surface Transportation Board to expedite its approval of the Western Alignment.

Verification

I, W. C. Trusler, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Statement, executed on October 22, 1998.



W. C. Trusler
P. O. Box 6
Ashland, Montana 59003-0006

APPENDIX D

APPENDIX D

SUPPORTING LETTERS FROM MONTANA BUSINESS GROUPS AND RESIDENTS

Fred Anderson, Principal, Custer County District High School

Carol Barta, Manager, Conoco Quik Stop

C. Robert Bennett, President, Miles Community College

Susanne Boedecker

Brock Boedecker

Jack and Joyce Cavanaugh

*Brent L. Christopherson, Chairman, Economic Development Council, Miles City Area Chamber of Commerce

Tom W. Clarke, Clarke Insurance Service

Monty Cranston

Alan Fjell

Bill Grant

David E. Graves

Kenneth Gress, K G Repair

Shayla Hagen

Dotty Johnstone, Manager, Club Buffet Bar

Kenneth W. Kaiser, President, Rocky Mountain Bank of Broadus

James P. Lucas, Esq., Lucas & Tonn, P.C.

Earl Mainwaring

Joey D. Malkuch

Marci L. Mercer

Dennis Mullen, Mullen Realty

Al "Buck" Muri

David Owen, President, Montana Chamber of Commerce

* Original sent directly to Board. Appendix contains copy.

APPENDIX D (continued)

Robert E. Pentecost

Kelly B. Reid, Owner/Operator, Miles City Comfort Inn

Lainey Reynolds-Keene, R.N., Healthcare Resource Management

Kaaren L. Rizor

Helene Schonenbach

Scott E. Schonenbach

Joe Stuver

Jerri S. Thomas, Executive Director, Big Sky Economic Development Authority

Frank J. Tooke

*US Bank

*Larry Woolston, President, Larry's IGA

* Original sent directly to Board. Appendix contains copy.

* Original sent directly to Board. Appendix contains copy.



CUSTER COUNTY DISTRICT HIGH SCHOOL

20 South Center, Miles City, MT 59301
(406) 232-4920
Fax: (406) 232-4923

Fred Anderson, PhD, Principal
Jack Regan, Assistant Principal
Ted Schreiber, Activities Director

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad-Rail Construction and Operation-Western Alignment in Rosebud and Big Horn Counties, Montana

Dear Mr. Williams:

Please include this letter as testimony in support of the alteration to the route originally approved by the transportation board for the Tongue River Railroad. In an area which had been designated as the Four Mile Creek Alternative.

I wish to add my support to the alternate route which has been come to be known as the Western Alignment. I support the Western Alignment Alternative for a variety of reasons, including but not limited to:

I believe that it provides a safer operation climate for the railroad and reduces the potential for accidents that may have been caused by the grades in the Four Mile Creek Alternative. I also favor the shorter truck distance in as much as the Western Alignment is some ten miles shorter than the original route which was approved. Also, I believe a primary consideration has to be the fact that the Western Alignment disturbs less acreage and reduces the number of landowners effected by the railline. Finally, I believe that it will provide the opportunity for the Tongue River Railroad to begin to transport coal to eastern markets in a more timely manner. Certainly, the entire Tongue River Railroad Project and the Western Alignment are not only very important to the out of state consumers, but are crucial to the economy of eastern Montana and certainly to the entire state as well.

Please include this as a letter of support for both the Tongue River Railroad and specifically the adoption of the Western Alignment at the southern end of the proposed route.

Respectfully yours,



Fred Anderson, PhD
Principal
Custer County District High School
20 South Center
Miles City, MT 59301

Verified By Notary Public, as follows

SUBSCRIBED AND SWORN before me this 26 day of October, 1998



Notary Public for the State of Montana
Residing at: Miles City
My Commission Expires 7-25-00

or Affirmed, as follows

I _____ declare (certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.
Executed on date _____.

Signature

October 26, 1998

Vernon A Williams
Secretary
Surface Transportation Board
1925 Street NW
Washington, DC 20423-0001

**RE: Fiance Docket 30186 (Sub No. 3) Tongue River Railroad-Rail
Construction and Operation-Western Alignment in Rosebud and Big Horn
Counties, Montana**

Dear Mr. Williams:

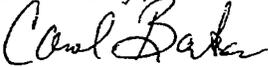
I am expressing my support for the Tongue River Railroad project and its application for approval of the Western Alignment.

I agree to the shorter distance, less acreage disturbed, safer operations to rail workers, less number of landowners affected by the railroad, improved environmental profile and improved operating economics and efficiencies.

Please except my letter of support of the Western Alignment.

Thank you for your time.

Sincerely,


Carol Barta Manager
Conoco Quik Stop
1308 S. Haynes
Miles City, MT 59301

I, Carol Barta, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.
Executed on October 26, 1998.



"PATHWAY TO SUCCESS"

MILES COMMUNITY COLLEGE

2715 DICKINSON ST. MILES CITY, MT 59301 (406) 232-3031 FAX (406) 233-3598
PRESIDENT 233-3512 REGISTRAR 233-3522 BUSINESS MANAGER 233-3515



October 20, 1998

Surface Transportation Board
1925 K Street N.W.
Washington, D.C. 20423-0001

To Whom It May Concern:

I had the opportunity to visit with my Board of Trustees at the October Board meeting about the Tongue River Railroad's proposal to shorten the 89-mile railroad transportation corridor from Miles City, Montana, to Ashland, Montana, with an alternative route referred to as the "Western Alignment." It is understood that TRRC believes that the alternate route is a better routing for the southern-most section of the railroad. It is further understood that TRRC is willing to spend considerably more dollars to construct the alternate route because less acreage will be disturbed by the alternate, and the route will be safer to rail workers due to more favorable grades and curvature of the line.

The Western Alliance proposal appears to be a fair and reasonable alternative and offers several advantages over the Four Mile Creek Alternative. Thus as president of Miles Community College, I have been directed to write a letter of support for the TRRC's application to change a portion of this new route called the "Western Alignment" and referenced as Finance Docket No. 30186, Sub. No 3.

It is hoped that if the application is approved, the project for building the new infrastructure will be enhanced and the construction of the new railroad can begin as quickly as possible. This new line should provide an economic boost to the eastern part of Montana that is sorely needed.

Sincerely,



C. Robert Bennett, president

October 21, 1998

Surface Transportation Board
1925 K Street NW
Washington DC 20423-0001

RE: Finance Docket 31086 (Sub No. 3) Tongue River Railroad-Rail Construction and Operation-Western Alignment in Rosebud and Big Horn Counties, Montana

Dear Sirs:

I write to you today in support of the Tongue River Railroad project in Eastern Montana, specifically approval for the Western Alignment. The need for completion of this project is great, on a local, state and national level. Having grown up in the area, I can testify that the need for local economic development is critical. The poverty level in this area is astonishing. Although Montana remains in the national news as the new best place for everyone from movie stars to television broadcasters, I can assure you that this is not the part of Montana that is in such high demand. This area has very little population growth, very few job opportunities and practically no good job opportunities. The local opponents consist of a few self-serving individuals who wish to preserve a lifestyle at any cost to their neighbors and communities.

On a state level, Montana is primarily an agricultural state with a low population and a very high property tax. With the prices of wheat and cattle at levels that are the lowest in many years, Montana needs additional tax bases and additional jobs.

On a national level, this project meets the public need of providing transportation for high quality, low sulfur coal to the nation. It is interesting that the very groups that have consistently fought this project describe themselves as environmentalists, and yet

fight a project that would help the nation comply with our Clean Air Act Amendments. The delay in this project has been due in great part, to the litigation and continual attempts of obstruction by these individuals and environmental groups. These people obstruct progress but contribute no solutions to the needs of the communities, the state of Montana, and the need for clean air in this nation. This project has been studied extensively for twenty years, EIS statements have been completed, a need has been established, investments have been made, and public support is there.

Regarding the specific route proposed described as the Western Alignment, it only makes sense to approve a route that is shorter, safer, affects less landowners, and enables the railroad to operate more efficiently. I join with Montana's congressional delegates, its governor, the Montana Chamber of Commerce, and countless affected people whose lives will be improved by this project, in asking for your approval to the application for the Western alignment. Thank you very much for allowing me this opportunity for expressing an opinion.



Susanne Boedecker

616 Park Lane

Billings, MT 59102

***Brock & Kellie Boedecker
9127 Waterloo Drive
Billings, MT 59101***

October 21, 1998

Surface Transportation Board
1925 K Street NW
Washington, DC 20423-001

RE: Western Alignment Project

Dear Mr. Vernon A. Williams

I am writing to express my interest in supporting the Tongue River Railroad project, specifically approval for the Western Alignment. The need for economic development in this area of Montana is very strong. By proceeding forward with the Western Alignment this need can be filled. As I see the situation the Western Alignment will be shorter, require less acreage, and be safer on both an environmental and operational standpoint.

Due to the needs of our nation for a source of high quality, low sulfur coal it would be a shame not to proceed forward with this project. This is why I am asking for your approval regarding this project.

Best Regards



Brock Boedecker

October 19, 1998

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

**RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad-Rail Construction
and Operation-Western Alignment in Rosebud and Big Horn Counties, MT**

Dear Mr. Williams:

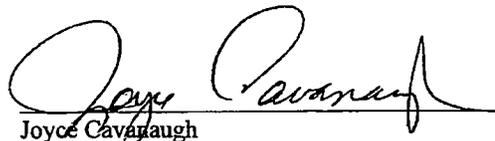
Please accept this letter as a Statement of Support on behalf of the Tongue River Railroad Company's application for approval of the Western Alignment in the above-referenced matter.

We have been residents of Custer County, Montana for the past 25 years, and realize the benefits that Custer County, as well as the surrounding counties, will gain from this project. The construction of the railroad will provide additional jobs, increase revenues for our school districts and increase the tax base.

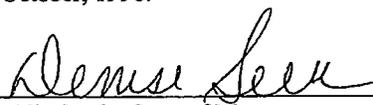
It is our understanding that the implementation of the Western Alignment will reduce the alignment's mileage by 12 miles, reduce the number of landowners affected, is more environmentally friendly and will provide safer conditions to rail workers. Because of these positive issues, we strongly support the application for the Western Alignment of the Tongue River Railroad Company.

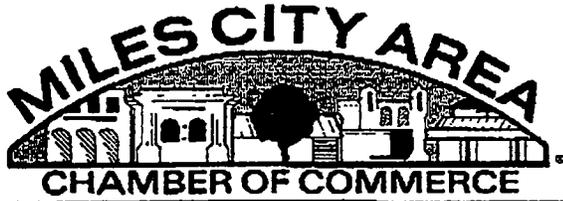
Sincerely,


Jack Cavanaugh
612 S. Stacy
Miles City, MT 59301


Joyce Cavanaugh
612 S. Stacy
Miles City, MT 59301

SUBSCRIBED AND SWORN to before me this 23 day of October, 1998.


Notary Public for the State of Montana
Residing at Miles City, MT
My Commission Expires: 3/13/99



COPY

**PROUD
PAST**



**PROGRESSIVE
FUTURE**

10-23-98

Surface Transportation Board
1925 K Street N.W.
Washington, D.C. 20423-0001

To Whom It May Concern:

On behalf of the Miles City Area Chamber of Commerce Economic Development Council, I would like to take this opportunity to offer our support for the approval of the Western Alignment part of the Tongue River Railroad project. (Finance Docket # 30186, Sub. No.3)

We believe this portion, as well as the total proposal, is essential in our nations efforts to provide low-sulfur coal in the marketplace and help offer economic stability to our region.

We appreciate TRR's efforts to work with Custer County and Miles City in this all important step towards positive development.

Sincerely,

Brent L. Christopherson
Chairman
Economic Development Council

Clarke

■ Tom W. Clarke, CPCU, CIC
■ Dale E. Hellman, CIC

INSURANCE SERVICE

10/23/98

P.O. Box 98 - 1009 Main Street
MILES CITY, MONTANA 59301
Telephone (406) 232-3353
Fax (406) 232-3356

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad--Rail Construction and
Operation--Western Alignment in Rosebud and Big Horn Counties, Montana

Dear Mr. Williams:

I am writing to express support for the Tongue River Railroad, and specifically for the Western Alignment proposal that is presently pending before your board.

The Tongue River Railroad project is terribly important to the Eastern part of Montana, and to the nation as a whole, as the coal located in this area is, and will become even more, vital to the economy of our Country. I don't believe there is any dispute of the need in America for high quality, low sulfur compliance coal to be used for the generation of electricity in the U. S. The construction of the Tongue River Railroad is essential to the development of this high quality coal, and the Western Alignment of the Tongue River Railroad would simply be a superior alternative to the presently approved Four Mile Creek Alternative. The Western Alignment would be 10 miles shorter than the currently approved plan, and also it would provide safer operating conditions for rail workers due to the more favorable grades and curvature involved in the Western Alignment.

Thank you for your consideration of the TRRC request for the Western Alignment.

I, Tom W. Clarke, declare under penalty of perjury that the foregoing is true and correct. Further I certify that I am qualified and authorized to file this statement. Executed on 10/23/98.



Tom W. Clarke



Monty Cranston

October 28, 1998

Mr. Vernon A. Williams, Secretary
Surface Transportation Board (STB)
1925 K Street N.W.
Washington, D.C. 20428-0001

Re: Finance Docket #30186, Sub. No. 3--
Support for Western Alignment (WA)
Route of the Tongue River Railroad (TRR).

Dear Mr. Williams:

As referenced herein, the Western Alignment (WA) route is about ten miles shorter, with more gradual slopes, than the Four Mile Creek alternative. Thus, the WA route will:

- 1) Improve the operating efficiency and economics of the TRR itself; and thereby, make Montana's low sulphur coal more price-competitive;
- 2) Create safer operating conditions for TRR workers due to flatter grades and fewer rail miles from the mines to the markets;
- 3) Reduce the number of land owners affected by the TRR;
- 4) Reduce environmental impacts from what will otherwise be steeper grades and longer distances of railroad track.

I have been involved with Montana businesses for the last 20 years, and more particularly, worked in the energy industry during the 1980's. I know from the university of hard -knocks that the United States governing agencies must be sharp and do everything possible to improve the competitiveness and infrastructure of it's energy industries, and protect the environment in the process. The TRR's WA route wisely balances the historically incongruent ideals between industry and the environment. Furthermore, and most significantly such a decision by the STB will help the TRR provide tax revenues and high-paying jobs for generations to come.

Truly,


Monty Cranston

Alan Fjell
Box 506
Birney, Mt 59012

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

RE: Finance Docket 30186 (Sub No.3) Tongue River Railroad-Rail Construction and Operation-Western Alignment in Rosebud and Bighorn Counties, Montana

Dear Mr. Williams:

I believe the question of need for the railway linking Decker, Mt. to Miles City, Mt. has already been established through the former approval of this project by the STB. The remaining questions to be considered concerning the Western Alignment proposal would seem to be:

- (a) Is the proposed route the shortest and most economical to provide the lowest priced coal to produce electrical energy for public consumption?
- (b) Will the newly proposed route create less disturbance to the environment as well as landowners daily operations by being 12 miles shorter?
- (c) Will the operation of the railroad be safer due to a straighter alignment and improved grade?

Information I have received would indicate an affirmative response to all three.

Opponents of this project have tried for years to litigate it out of existence and claim irreparable damage to the environment. In fact, it makes possible the opening of coal fields to produce millions of tons of high quality coal which, when burned, meet the legislated air quality standards for the year 2000. If the rail line can be stopped, mining becomes a non-issue in this community. Hundreds of high paying jobs, community services, improved roads, adequate law enforcement, and a much improved tax base are dependent upon the approval of this project by the STB. Southeastern Montana is in dire need of industrial development and employment opportunities. This project is the only one being developed at this time to provide positive economical impacts for our small communities.

I Alan Fjell, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on October 25, 1998.

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad-Rail
Construction and
Operation-Western Alignment in Rosebud and Big Horn Counties, Montana

Dear Mr. Williams:

My name is Bill Grant. I currently work as a truck driver for the sawmill in Ashland, Montana. I support the Tongue River Railroad's Western Alignment application and strongly urge the Board to approve this alignment as soon as possible.

I'm not sure how many studies and impact statements have been done for this rail system and for new mine construction, but there have been too many. It is time to move on, so that the projects can be constructed and operated. I believe that the public has had more than enough opportunity to comment on this project and that it can be built without causing undue hardship on the environment. Certainly, new jobs and tax revenues will not harm the economy of this area.

I urge the Surface Transportation Board to approve the Western Alignment immediately.

VERIFICATION

I, Bill Grant, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Statement.

October, 23 1998.


Bill Grant
Ashland, Montana 59003



2328 ELM STREET
BILLINGS, MT 59101 USA
(406) 248-8085

22 October 1998

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

Re: Finance Docket 30186 (Sub No.3) Tongue River Railroad - Rail Construction and Operations - Western Alignment in Rosebud and Big Horn Counties, Montana

Dear Mr. Williams;

I am writing to you to express my unreserved support for the approval of the referenced proposal. I am in full support of the Tongue River Railroad and feel that the Western Alignment proposal is in the best interests of both the project and the residents of Montana.

I am well aware of the opposition to both the construction of the railroad and the Western Alignment and feel that I must express my views of disagreement with the opposition in that I strongly feel that there is no real substance to their positions when considering the fact that the west, its vast resources and the current economic condition and well being of Montana and surrounding areas are directly attributable to the construction of the railroads of yesteryear. We have a continued need for both the nation and for those of us that live here in Montana and surrounding areas. Those needs can best be met by the continued development of our natural resources that are currently trapped both geographically and economically here in Montana. Good, safe and economic access must be developed to reach those needed resources. I believe that the Tongue River Railroad and the proposed Western Alignment is the solution needed and best meets the requirements of safety and economics.

I have and continue to be involved in industry and have nothing to personally gain from the development of this project other than the benefits that will be gained by all of the residents in this region; the sorely needed economic diversity that will create new jobs and a higher standard of living. The direct and indirect benefits that will come from the growth stimulated by the development of this project would be difficult to project, but it would be easy to assess the negative results that would come from the failure of this project to move forward to

completion. That assessment is published in the daily newspapers of the region every day of the week. The access to market denied to the businesses of the State of Montana, the inability to be competitive, the lack of economic development and the resultant low standard of living for most that live here.

For these reasons I am asking that the Surface Transportation Board approve the request and proposal of the Tongue River Railroad for the Western Alignment.

Your kind and serious consideration is appreciated.

Respectfully,



David E. Graves
2328 Elm Street
Billings, Montana 59101

SUBSCRIBED AND SWORN before me this 21 day of October, 1998



Notary Public for the State of Montana

Residing at Billings

My Commission Expires 8-1-99

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad-Rail
Construction and
Operation-Western Alignment in Rosebud and Big Horn Counties, Montana

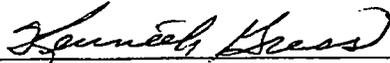
Dear Mr. Williams:

My name is Kenneth Gress and I live in Ashland, Montana where I own and operate K G Repair. I am submitting this verified statement in support of the Tongue River Railroad's application which is pending with the Surface Transportation Board for the Western Alignment.

I urge the Board to approve this alignment as it will provide a more efficient means of delivering Montana coal produced from the Decker, Montana area to the utility market place in the upper midwest and Great Lakes region. Once the rail line is completed, the high quality coal from the area surrounding Ashland can be developed.

The environmental impact studies which have been completed for this rail project have repeatedly established that the need for the project exists and that the rail line should be constructed and operated. I support the Surface Transportation Board's position of supplementing the last EIS document and would urge the Surface Transportation Board to approve the Western Alignment immediately.

I, Kenneth Gress, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Statement, executed on October 22, 1998.


Kenneth Gress
K G Repair
Ashland, Montana 59003

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad-Rail Construction and
Operation-Western Alignment in Rosebud and Big Horn Counties, Montana

Dear Mr. Williams:

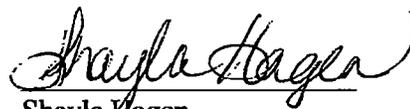
My name is Shayla Hagen and I live in Ashland, Montana. I am registering this letter in support of the Tongue River Railroad's application for the Western Alignment. I own and operate the Ashland Mercantile.

The construction of this project and new coal mine development will bolster the economy of southeastern Montana, providing badly needed employment opportunities and tax revenues.

I urge the Surface Transportation Board to approve the Western Alignment as quickly as possible.

VERIFICATION

I, Shayla Hagen, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Statement. Signed this 22 day of October, 1998.



Shayla Hagen
Ashland, Montana 59003

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad-Rail Construction and
Operation-Western Alignment in Rosebud and Big Horn Counties, Montana

Dear Mr. Williams:

My name is Dottie Johnstone. I manage the Club Buffet Bar in Ashland, Montana. I
urge the Board to approve the Tongue River Railroad's application for the Western Alignment.

From the information I have seen, the Western Alignment is 12 miles shorter than the
Four Mile Creek alternative approved by the Surface Transportation Board. I also understand
that the Western Alignment does not have the steep grades which the Four Mile alignment would
create. From my experience in operating a business, I can understand the importance of
incorporating efficiencies into any business situation.

I urge the Surface Transportation Board to approve the Western Alignment quickly.

VERIFICATION

I, Dotty Johnstone, declare under penalty of perjury that the foregoing is true and correct.
Further, I certify that I am qualified and authorized to file this Statement. Signed October 22
1998.


Dotty Johnstone
Ashland, Montana 59003



PO Box 347
Broadus, Montana 59317

406/436-2611 • Fax: 406/436-2604
Montana toll free: 800/649-2612

October 27, 1998

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad-Rail Construction and Operation-Western Alignment in Rosebud and Big Horn Counties, Montana

Dear Mr. Williams:

Rocky Mountain Bank of Broadus wishes to express support for the Tongue River Railroad project. We feel this project will have a positive impact on Southeastern Montana. The creation of new jobs during construction and by new coal mine development will offer employment that will retain families and provide opportunities for our young people to remain in the area. An increase in the tax base will benefit counties that have experienced a decline in revenue in the past few years. This project should provide needed and long lasting economical benefits to Southeastern Montana.

Regards,

A handwritten signature in cursive script that reads 'Kenneth W. Kaiser'.

Kenneth W. Kaiser, President
Rocky Mountain Bank of Broadus
P.O. Box 347
Broadus, Montana 59317



LOCATIONS: BILLINGS • BROADUS • HARLEM • PLAINS • PLENTYWOOD • STEVENSVILLE • WHITEHALL

Kenneth W. Kaiser

SUBSCRIBED AND SWORN before me this 27 day of October, 1998.

Maudie M. Camish

Notary Public for the State of Montana

Residing at: Broadus

My Commission Expires on 6-30-99

LUCAS & TONN, P.C.

ATTORNEYS AT LAW
513 MAIN STREET
P.O. BOX 728
MILES CITY, MONTANA 59301
TELEPHONE: 406-232-4070
TELEFAX: 406-232-4093

JAMES P. LUCAS
A. LANCE TONN

October 26, 1998

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington DC 20423-0001

Re: Finance Docket 30186 (Sub No. 3) Tongue River Railroad--Rail Construction and
Operation --Western Alignment in Rosebud and Big Horn Counties, Montana

Dear Mr. Williams:

My name is James P. Lucas. My business address is 513 Main Street, Miles City, Montana 59301, and my home address is 1920 Sudlow, Miles City Montana 59301. I am a former Speaker of the Montana House of Representatives, and also served sixteen years on the Board of Directors of Montana Power Company, and its coal and energy subsidiary. I mention these positions only to indicate my familiarity with the coal mining industry, as well as being conversant with the economic implications for the State of Montana, and the national importance of bringing Montana's superior compliant coal into production and distribution.

This statement is in strong support of approval of the Tongue River Railroad project now pending before the Surface Transportation Board (STB). I have had access to extensive documents, studies, environmental impact statements, and other materials, and have concluded that the project would be greatly beneficial to the State of Montana, and particularly Southeastern Montana, and also

has national implications in providing high compliance coal to meet national needs and the Clean Air Act standards.

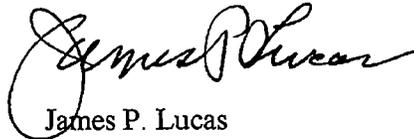
It is apparent that for at least the next quarter century and perhaps longer, coal will continue to be in great use as an energy source in the United States. Tongue River Railroad (TRR) will provide direct access to the high quality coal located in Montana, and which is needed on a national level. TRR would be the shortest route for movement of this coal, as well as facilitating shipment of coal from Northern Wyoming to the mid-west. As far as Montana is concerned, we are a large state with a small population, high unemployment rate, and insufficient revenues and tax base. Construction of the Tongue River Railroad and the proposed two new mines would enable our state to continue to compete in the coal industry. The railroad line, once completed, will enhance the tax base and produce substantial new revenues and employment.

I will not comment further about the need for establishing the railroad, since the STB has already concluded that TRR serves the public convenience and necessity, and it would seem that the only real issue before the STB is whether to stay with the present alignment (four mile creek alternative), or whether the proposed "Western Alignment" route should be approved. In this regard, it would seem there are four major considerations being: (A) The most efficient and economic means of transporting the coal; (B) Safer operating conditions; (C) Adequate protection of the environment; and (D) The need to act quickly in order to seize this opportunity, and to timely meet the demands of the market. Speaking to efficiency, TRR is the shortest route to and from Montana's substantial coal fields. The Western Alignment is twelve miles shorter, affects fewer landowners, and involves grades that are considerably less steep, which would improve both efficiency and safety. The extensive erosion controls and other measures to protect the integrity of the land provide assurance

of environmental compatibility.

In conclusion, it appears that the proposed Tongue River Railroad is the most logical and feasible way of transporting our high compliance coal to market. The building of this railroad can be done with relatively minor disruption of productive lands, and will provide substantial economic and other benefits that are badly needed for our area, with no significant social problems. Narrowing this down to the main issue before the STB, the Western Alignment is shorter, better located, will improve operating expenses to the benefit of the consumer, and is the shortest route to place coal in the mainstream of transportation to market. All things considered, I strongly urge the STB to rapidly approve the Western Alignment so that construction can commence.

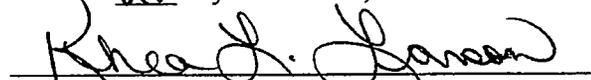
Very truly yours,



James P. Lucas

James P. Lucas
1920 Sudlow
Miles City MT 59301

SUBSCRIBED AND SWORN before me this 27th day of October, 1998.



Notary Public for the State of Montana
Residing at Miles City, Montana
My Commission Expires: 9/15/2000

Earl Mainwaring
P. O. Box 648
Broadus, MT 59317

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, D C 20423-0001

October 22, 1998

RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad - Rail Construction and
Operation - Western Alignment in Rosebud and Big Horn Counties, Montana

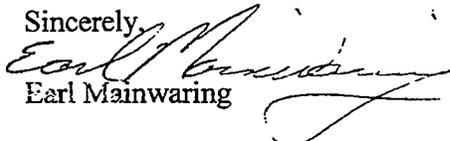
Dear Mr. Williams:

I am writing to urge you to support and facilitate the approval of the Tongue River Railroad Company's proposal for the rail route known as the Western Alignment.

I support the Western Alignment as I believe it is a more effective , safer rail route, affects less landowners, and would result in a more efficient avenue to transport coal from the Decker area and help provide potential coal production in western Powder River County.

As a loan officer with the only bank in Powder River County I can tell you this rail route would aid in the production of coal in our area. Which would provide needed employment and a wider tax base, thus greatly improving the economic condition of the area.

Sincerely,


Earl Mainwaring

SUBSCRIBED AND SWORN before me this 23 day of October, 1998

Margaret Mc Camish
Notary Public for the State of Montana
Residing at: Broadus
My Commission Expires 6-30-99

Joey D. Malkuch
2434 Constellation Trail
Billings, Montana 59105
406-245-9084

October 30, 1998

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

RE: Finance Docket 30186 (Sub No. 3); Tongue River Railroad-Rail Construction and Operation-Western Alignment in Rosebud and Bighorn Counties

Dear Mr. Williams:

My name is Joey D. Malkuch and I am employed by United Parcel Service in Billings, Montana.

My home address is 2434 Constellation Trail, Billings, MT, 59105.

I stand in strong support of the application now before the Surface Transportation Board, such application referenced above as Finance Docket 30186 (Sub No.3). This "western alignment" application is intended to modify the route previously approved by the STB to better address issues of significant importance. In contrast to the Four Mile Creek alternative, it seems quite clear to me that better operating economics will obviously result from the western alignment, a routing that is 12 miles shorter and free of the steep grades. The added benefits in terms of environmental issues, as well as the impact upon acreage and the number of landowners involved, certainly warrant the utmost attention of the Surface Transportation Board.

While I realize there are those who resist and object to the Tongue River Railroad, I believe such opinions will exist no matter what the plan, proposal or project. Whether it is the Tongue

River Railroad, the western alignment, or some other type of project, there will never be an honest and objective review of the evidence by those who work to obstruct and delay progress. I believe the Tongue River Railroad is in fact progress – it is progress for our nation, for our state, and for our rural communities that so desperately need a positive outlook for their future.

The opportunity to make the Tongue River Railroad a reality is here and now. The merits of the railroad are well known and well documented. For this reason, it is important that we move past the recurring attempts to delay or halt the project, and get on with the business at hand. The overriding obligation at this advanced stage is to designate and approve the most appropriate routing possible. I believe the evidence weighs heavily in favor of the western alignment and I urge you to seriously consider the advantages this route offers.

Now that the project is moving to construction, I trust you will act to assure the best possible route is a part of the plan. Thank you for the opportunity to express my view in this important matter.

I, Joey D. Malkuch, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on October 30, 1998.

Regards,

A handwritten signature in black ink, appearing to read "Joey D. Malkuch". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Joey D. Malkuch

Marci L. Mercer

Six Carriage Way, Missoula, Montana, 59802

October 23, 1998

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad-Rail Construction and Operation-Western Alignment in Rosebud and Big Horn Counties, Montana

Dear Mr. Williams:

As a great granddaughter of a Montana ranch family, I have personally experienced the positive impact "the new and improved" mining industry has had on my relatives and on the environment in Stillwater county. Like Rosebud and Big Horn counties, Stillwater is suffering from low cattle prices, low agricultural prices, and diminishing industries. Families living in these counties are at risk of losing their jobs, their farms, their ranches, and their businesses. Fortunately, Stillwater families are able to diversify their incomes by having family members work at the mine. Besides supplying the world with platinum, the mine takes a proactive role in caring for the environment as well as caring for the people. Quality health insurance, generous retirement plans, high monthly income, and most importantly a tax base for the county to invest in education and the environment are just a few of the benefits to Stillwater county. Tongue River Railroad presents a similar opportunity for Rosebud and Big Horn counties, thus I strongly support the Board approving the Western Alignment.

As a Financial Consultant and Certified Financial Manager with Merrill Lynch, I understand the important significance of high-quality compliance coal. Montana's energy efficient coal is the coal of the future. Environmental groups are notorious for stalling tactics (requesting duplicate EIS reports), exaggerating the environmental impact (ignoring technological advances that enable industries to work in harmony with the environment), and requesting easements that are ridiculously expensive and not necessarily in the best interest of the environment. If one takes a look at the total picture, the Tongue

October 23, 1998

River Railroad project benefits Montana economically and more importantly benefits the world environmentally.

Please consider the total benefit of the Tongue River Railroad project to Montana and to our country's clean air. This opportunity should not be lost; the Board should approve the Western Alignment quickly and allow construction to begin!

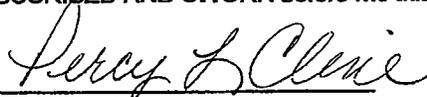
Sincerely,



Marci L. Mercer
Six Carriage Way
Missoula, Montana 59802



SUBSCRIBED AND SWORN before me this 23 day of October, 1998



Notary Public for the State of Montana

Residing at: _____ NOTARY PUBLIC for the State of Montana

My Commission Expires _____ Residing at Missoula, Montana

My Commission Expires January 30, 2000



Mullen Realty



SALES — MANAGEMENT — APPRAISALS

Phone 232-3681
Fax 232-3674

P.O. Box 1125
MILES CITY, MONTANA 59301

Vernon A Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

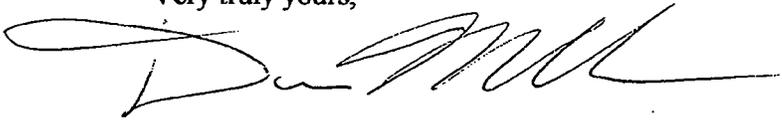
RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad-- Rail Construction and Operation--Western Alignment in Rosebud and Big Horn Counties, Montana

Dear Mr. Williams:

I am the owner of several commercial enterprises, a number of homes in the Miles City area, and the owner of Mullen Realty, a real estate firm which has been in business in Southeastern Montana for 38 years. I take this means to express my strong support for the Tongue River Railroad project. Montana has a large supply of some of the country's finest coal which is in great demand by users attempting to comply with the requirements of the Clean Air Act. It is in the national interest to make this coal available to the market, and the Tongue River Railroad is the means by which it can be done cheaper and more efficiently than any other way. This project, and the 127 mile route has been approved, but an application has been filed with your board to change the routing at the south end to what is now the "Western Alignment". In reviewing these alternative routes, it appears the western alignment is shorter (by twelve miles), and will not involve the rapid and steep climb and equally rapid and steep descent to the floor of the Tongue River valley, and thus is the safer and much more efficient alignment than the currently approved Four Mile Creek alternative.

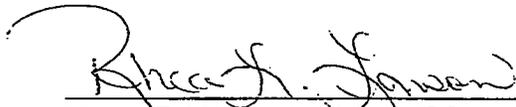
I would also point out what great benefit this would be to Southeastern Montana, and in fact to all of our state. The Tongue River Railroad and mines which will follow, will provide significant employment and a large new tax base. Under programs previously adopted by the State, a significant part of revenues derived from coal facilities and operations are made available for projects in the area impacted by the coal development. Thus, in the past we have seen the building of new schools, expansion of community college facilities, improvement of the infrastructure, enhancement of arts and culture centers, and a host of additional projects. This is significant and important for our rural area and for our large, but thinly populated state. What better type of a project can there be than one which satisfies a national energy need, provides employment, wisely utilizes a natural resource, give great benefit to the area in which it will be centered, and is well engineered and environmentally sound.

Very truly yours,



Dennis Mullen
Mullen Realty
803 S Haynes
Miles City, MT 59301

SUBSCRIBED AND SWORN before me this 26th day of October, 1998.


Notary Public for the State of Montana
Residing at: Miles City, MT
My Commission Expires 9/5/2000

October 27, 1998

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington DC 20423-0001

Re: Finance Docket 30186 (Sub No. 3) Tongue River Railroad--Rail Construction and Operation --Western Alignment in Rosebud and Big Horn Counties, Montana

Dear Mr. Williams:

I have been advised that an application has been filed by the Tongue River Railroad to alter the south end of the approved route. This letter is written to indicate the strong support of this office for the project itself, and also to support the request to change the routing to the "Western Alignment".

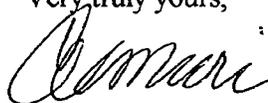
It is my impression that the question of need has already been decided by the previous finding of the Surface Transportation Board that the Tongue River Railroad project will serve the public convenience and necessity. Be that as it may, I would again underscore what a great project we feel this is for our area and for the State of Montana. Montana has some of the best coal in the United States, positioned along or near the routing of the proposed Tongue River Railroad. It is important to get this resource into production and to transport it to the market, particularly in view of the fact that the Montana Powder River Basin coal is needed in many areas to allow compliance with the

Clean Air Act. Unfortunately, our state does not have a large labor force, and has a relatively small and scattered population with increased expenses that go along with these rural characteristics. The building of the railroad and mining of coal will be a boon to the state in the form of increased revenues, and will be extremely important to our end of the state with the opportunity for employment and new tax base and revenues. In addition, this project has a national overtone in that it will bring this excellent source of energy on line and available to commercial and industrial areas.

Turning to the issue of alignment, the newly proposed alignment referred to as the Western Alignment offers distinct advantages. By nature of my business, I am heavily involved with ranching properties, and know that the fact that the Western Alignment will affect a smaller number of land owners, and reduce the acreage subject to disturbance are big pluses. In addition, the elimination of the steeper grades and curvature at the southern end will obviously allow safer operating conditions, improved economics and efficiencies, and better treatment of environmental concerns. Finally, the fact that the Western Alignment is 10 - 12 miles shorter would be ideal. This apparently has all been analyzed by the financial people involved who have reached a conclusion that although the Western Alignment is more expensive; the additional capital and investment is warranted because of the above benefits.

I conclude by saying that this is a "once in a lifetime" project for Southeastern Montana; its economic impact will be considerable with small and acceptable environmental impact; and that the construction of the railroad will be a giant step in being able to more fully satisfy the national need for high quality, low sulphur compliance coal.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Al Muri".

Al "Buck" Muri

Al "Buck" Muri
315 Main Street
Miles City, Montana 59301

SUBSCRIBED AND SWORN before me this 27th day of October, 1998.

Nancy H. Hurick

Notary Public for the State of Montana

Residing at Miles City, Montana

My Commission Expires: 11/21/99



Chamber of Commerce
Your Business Advocate

October 27, 1998

Vernon A. Williams
Surface Transportation Board
1925 K Street N.W.
Washington D.C. 20423-0001

Dear Mr. Williams:

The Montana Chamber of Commerce has a long history of advocating public policies which will improve the economy of Montana. The Chamber's core philosophy advocates economic advancement through private investment, adequate infrastructure and the use and development of Montana's natural resources while protecting the environment. The Chamber firmly believes that the Tongue River Railroad is a superb example of this philosophy at work.

The Montana Chamber would encourage your office to give approval to the western alignment for the Tongue River Railroad. Seldom does one find such compelling win-win solutions. Public policy which ignores the needs of private enterprise to operate in the most efficient manner is damaging to private investment and hurts future jobs. Likewise, private investment which extracts its efficiencies from a disregard of environmental protection is also ultimately harmful to future possibilities.

As understood by the Montana Chamber the new proposed route truly represents a more efficient operation for the railroad while being the wisest plan for protecting the environment. This is public policy at its finest.

The Chamber would add one note of caution regarding the evaluation of environmental protection. Too often the Chamber is involved in policy hearings with representatives from environmental groups who are constantly critical of any proposal. While these groups may give public officials valuable insight they seldom have a plan that actually allows something to be accomplished. The Chamber believes it would be tragic if the opportunities represented by proposed railroad and this new alignment were to be denied to Montana because of the protests of those who would hold out for the a level of perfection not possible by any human endeavor.

Montana's best future truly depends on the responsible expansion of basic industries. We hope this need will be a primary part of your considerations in this issue.

Thank you for your time and consideration.

Respectfully


David Owen, President

P.O. Box 1730 • Helena, Montana 59624 • (406) 442-2405 • Fax (406) 442-2409 • mtchamber@in-tch.com

*October 27, 1998
Dorinda A. Diamond
Residing at Helena, MT
My commission expires
February 8, 1999*

October 30, 1998

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

RE: Finance Docket 30186 (Sub No. 3); Tongue River Railroad
Rail Construction and Operation-Western Alignment in Rosebud and Bighorn Counties

Dear Mr. Williams:

My name is Robert E. Pentecost and I am a self-employed contractor and home builder in Billings, Montana. My mailing address is P.O. Box 22212, Billings, Montana 59104.

I am writing to go on record in support of the application by the Tongue River Railroad Company for approval of the Western Alignment. I have followed the Tongue River Railroad project for some time now and consider myself well informed with regard to the objective and opportunity associated with its development. Certainly the merits of the project have already been evaluated in the STB's decision to authorize construction of the rail line. I agree the project represents an positive step in achieving efficiency and competitiveness within our state and nation.

With this in mind, I urge the Surface Transportation Board to carefully examine the additional benefits that may be achieved as a result of the Western Alignment. The further advantages that will be realized as a result of this routing only serve to strengthen and enhance the overall purpose of the project.

If we can indeed agree that the Tongue River Railroad is worthy of construction, then let us take the next step to ensure we have the most advantageous routing possible. In this spirit, your consideration and approval of the Western Alignment will be greatly appreciated.

I, Robert E. Pentecost, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on October 30, 1998.

Sincerely,



Robert E. Pentecost
P.O. Box 22212
Billings, MT 59104

October 27, 1998

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad--Rail Construction
and Operation--Western Alignment in Rosebud and Big Horn Counties, Montana

Dear Mr. Williams:

As a resident and longtime business owner in Miles City, Montana, I have been following the Tongue River Railroad project since its inception. I support the Western Alignment which the Tongue River Railroad Company is proposing for a number of reasons, some of them being that the total distance is ten miles shorter; there will be less acreage subjected to disturbance by the railroad; and it offers improved operating economics and efficiencies to the intended purpose of the Tongue River Railroad project.

I have been active in the Miles City Chamber of Commerce, and I am the president of Cowtown Promotions, a nonprofit organization which focuses on event-specific economic development and entertainment promotions for the betterment of Miles City. I love my community, and I have been very fortunate to be able to make a living here while raising a family and striving to improve the opportunities Miles City affords its residents. However, I see a strong need for the development of already existing assets in southeastern Montana, super compliant coal in particular, in order for Miles City to remain a thriving community amidst the economic pitfalls which are affecting agriculture, and the Tongue River Railroad project is a viable, worthwhile, and low-impact way to accomplish such development.

Please give your utmost consideration to the application which is being submitted by the Tongue River Railroad for rail construction and operation of the Western Alignment. I know I look forward to the benefits that will certainly be seen in our community.

Sincerely,

Kelly B. Reid

Kelly B. Reid

Owner/Operator

Miles City Comfort Inn

1615 S. Haynes

Miles City, MT 59301

SUBSCRIBED AND SWORN before me this 27th day of October, 1998.

(SEAL)

Cynthia E. Reid

Notary Public for the State of Montana
Residing at Miles City, Montana
My Commission Expires: 11/07/2001

HEALTHCARE RESOURCE MANAGEMENT

2310 Broadwater Ste. 8A
Billings, MT 59102
406-652-6075

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423 - 0001

RE: Finance Docket 30186 (Sub. No. 3) , Tongue River Railroad - Rail
Construction and Operation-Western Alignment in Rosebud and Big Horn Counties,
Montana

Dear Mr. Williams,

Please place my name on the list of supporters for approval of the Western Alignment.

I am a native Montanan and grew up in a community that truly prospered from
partnerships with industry, including a Coal Mine. I trust the integrity of the
Administration of Tongue River Railroad and believe very strongly, again from
real life experience, that if allowed to conduct business as planned the project will
bring with it value and prosperity for all of us.

Very simply stated, " We should not be denied that opportunity!".

Thank you for your consideration of my position of support.

Lainey Reynolds-Keene, R.N.
2310 Broadwater Ste 8A
Billings, Mt. 59102
1 406 652 6075

I , Lainey J. Reynolds-Keene, declare under penalty of perjury that the foregoing is
true and correct. Further, I certify that I am qualified and authorized to file this
statement. Executed on October 24, 1998.



C: Don Sterhan, TRR , Billings
File/TRR

**Raymond and Kaaren Rizor
HC 71 Box 1197
Ashland, MT 59003**

October 25, 1998

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad-Rail Construction and Operation-Western Alignment in Rosebud and Big Horn Counties, Montana

Dear Mr. Williams:

This letter is written to offer my support of the proposed Western Alignment of the Tongue River Railroad and the construction of that rail system without further delay.

The Tongue River Railroad Company has done its homework. It has demonstrated the need for a shorter, more economical route to transport high compliance coal to the country's coal utility market. It has offered an alternate route, which takes into consideration environmental issues, safety, efficiency and economics. In addition, the Western Alignment would impact fewer landowners. On the other hand, it promises to enhance the economy of an impoverished area, bringing jobs and commerce to the Ashland Community.

Those in opposition to the railroad and coal mining have said that they want to "preserve a way of life." That's all well and good for a few. However, for the majority of the people in Ashland, who, according to the 1990 Census, live below poverty level, their way of life is hardly worth preserving.

I care very much about the environment, but I also care about people who have no means of supporting their families because good jobs are not available. We must balance environmental concerns with common sense. The economic benefit for most of the community must be considered.

As a resident of Ashland, I have silently sat by as the very vocal Northern Plains Resource Council attempted, in any way possible, to place stumbling blocks in the path of coal development in southeastern Montana. At the same time, I have seen my children and many of my neighbor's children grow up, obtain college degrees, and move out of Montana to places where they and their spouses can earn a living. It is true that Montana's greatest export is its children. We must do something to keep our most valuable resource, our children, in our state.

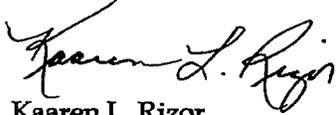
The time has come to put a stop to the delay tactics of the Northern Plains Resource Council and other self-interest groups. It is time to address the needs of the majority of people in southeastern Montana. There is a need for high compliance coal throughout this country. We have an abundance of it, which can be mined and transported in an environmentally safe and economically sound manner by utilizing the proposed railroad.

The Ashland Community Action Team and Rosebud County Commissioners are preparing to develop and implement a plan that will address the socio-economic and environmental impact of coal development in this area. We recognize the need for involvement in the process in order to insure that growth takes place in a sound and orderly manner.

An opportunity now exists for Ashland to rise out of the despair of poverty.

Please allow us to seize this chance to improve our lot.

Sincerely,



Kaaren L. Rizor
HC 71 Box 1197
Ashland, MT 59003

SUBSCRIBED AND SWORN before me this 26th day of October, 1998



Notary Public for the State of Montana
Residing at: Ashland
My Commission Expires 11-09-01

October 16, 1998

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-001

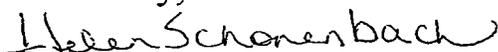
Dear Mr. Williams,

This letter is in support of the Tongue River Railroad project and its application for approval of the Western Alignment. I am employed at First Community Bank of Ashland and can tell you there is great need economically in this area for this project and subsequent mine development. Jobs, tax base, and revenues are badly needed in this depressed area.

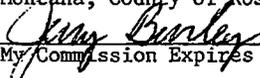
I have read with dismay how radical environmentalist groups (backed with money from other mainly eastern states) try to control anything that interferes with land. There has to be a limit. Railroad construction is no more damaging than highway construction. Controls such as that can be used to control sediment loss.

It is time to get on with this project, area residents have discussed and hoped for years that the railroad would come through, the mine would be built, and a better life could be accomplished. There have been sufficient Environmental Impact Statements! Such an expensive waste of money and lost opportunity.

Sincerely,


Helen Schonenbach

Notary Public for the State of
Montana, County of Rosebud,


My Commission Expires 11-9-01

October 16, 1998

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-001

Dear Mr. Williams,

This letter is in support of the Tongue River Railroad project and its application for approval of the Western Alignment. I am employed at Tongue River Lumber Co. and can tell you there is great need economically in this area for this project and subsequent mine development. Jobs, tax base, and revenues are badly needed in this depressed area.

I have read with dismay how radical environmentalist groups (backed with money from other mainly eastern states) try to control anything that interferes with land. There has to be a limit. Railroad construction is no more damaging than highway construction. Controls such as that can be used to control sediment loss.

It is time to get on with this project, area residents have discussed and hoped for years that the railroad would come through, the mine would be built, and a better life could be accomplished. There have been sufficient Environmental Impact Statements! Such an expensive waste of money and lost opportunity.

Sincerely,

Scott Schonbach
Scott E. Schonbach

Notary Public for the State of
Montana, County of Rosebud,

Jerry Bentley
My Commission Expires 11-9-01

October 22, 1998

From:
Joe Stuver, President,
Powder River Commercial Club
Publisher, Powder River Examiner
Box 328, Broadus, Montana 59317
406-436-2244

To:
Surface Transportation Board,
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Finance Document No. 30186, Sub. No 3. In support of the Western Alignment proposed by Tongue River Railroad Co.

Dear Board members:

I am writing this letter both in behalf of the Powder River Commercial Club - the county's chamber of commerce made up of local business people and individuals - and for myself as a business owner and life-long resident of the county.

At a recent meeting attended by most of the voting membership, the Powder River Commercial Club voted, unanimously, to go on record in support of the railroad construction and its Western Alignment. Personally, I also am in support.

Powder River County's chief export has long been its young people. With family ranches - which the county is dependent upon - struggling, there are simply no job opportunities here. The railroad, and hopefully the following opening of coal mines in the area - would greatly ease this situation.

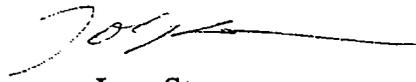
Powder River County's taxpayers are also the highest tax levied of any county in Montana. There are simply too few of us - around 2000 in the entire county - to continue to be able to "pay the piper" if you will - and survive.

We are a hard working people, with a deep sense of commitment to family, friends, community, state and country. We represent what I feel is the heart and soul of our great country. But I truly fear for the future. Without the added economy and opportunities provided by the railroad, that future is indeed in jeopardy.

Therefore, we are asking that you approve the application for the Western Alignment.

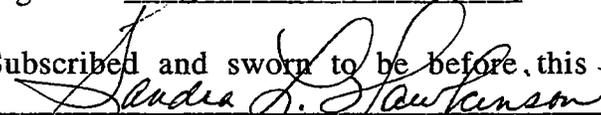
Thank you for your time and consideration.

Sincerely,



Joe Stuver

Signature 

Subscribed and sworn to be before, this 23rd day of Oct. 1998.


Notary Public for the State of Montana, residing at Broadus,
Montana. My commission expires 11/16/99





October 13, 1998

Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

To whom it may concern:

I am writing to offer my support for the Tongue River Railroad project which is a matter being considered by your board in Finance Docket Number 30186, Sub. No. 3. Big Sky Economic Development Authority is in favor of this project because it provides a shorter, more direct and economical route for coal shipments into the marketplace. We expect that access to Montana's coal reserves leading to the development of new coalmines will be the result of this improved transportation system. This rail expansion will result in economic benefits to the entire state of Montana as the competitiveness of our coal industry is increased while creating higher-paying jobs.

As the economic development agency for the Yellowstone County region of Montana, we are involved in initiatives to add value to Montana industries and believe that the Tongue River Railroad is a crucial link to improve access to our rich natural resource base. In addition, construction of the Tongue River Railroad project itself will create higher-wage construction jobs and is sure to increase employment in the regional transportation sector.

Our research on this subject also indicates that the "Western Alignment" offers a very sound alternative routing for the southern-most section of the railroad alignment. Some of the benefits of the Western Alignment over the "Four Mile Creek Alternative" are the shorter distances, fewer private acres impacted by the railroad development, and what seems a safer route for all involved with fewer grades and curvatures.

In closing, we heartily endorse and support the Tongue River Railroad project and urge your agency to fully consider the benefits this development will add to the Montana economy when making your decision.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry S. Thomas". The signature is fluid and cursive, written over a horizontal line.

Jerry S. Thomas
Executive Director

FRANK J. TOOKE
P.O. BOX 363 519 MAIN STREET
MILES CITY, MONTANA 59301
(406) 232-7070

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, D.C 20423-0001

RE: Finance Docket 30186 (Sub No. 3) Tongue River Railroad-Rail Construction and Operation- Western Alignment in Rosebud and Big Horn Counties, Montana

Dear Mr. Williams:

I am writing to urge the Surface Transportation Board to approve the Western Alignment proposal requested by the Tongue River Railroad. I believe the project is essential to the development of extensive low sulfur coal reserves in Southeastern Montana and will make existing low sulfur coal production in Montana more competitive. It is my understanding that the proposed alignment will improve operating and safety conditions for the railroad. It will also reduce rail line distance and the number of effected landowners. I believe the proposed alignment will also minimize the disturbance of and environmental impact to a significant number acres.

It appears to me that, due to the magnitude of the project, operational and safety concerns, the most efficient and cost effective route should be utilized. I strongly encourage the Surface Transportation Board to approve the proposed Western Alignment.

Yours truly,



Frank J. Tooke

Frank J. Tooke
519 Main Street
Miles City, Montana 59301

I, Frank J. Tooke, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on October 28, 1998.

Frank J. Tooke



P.O. Box 30878
Billings, Montana 59115

October 23, 1998

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

**RE: Finance Docket 30186 (Sub No.3) Tongue River Railroad-Rail Construction
and Operation-Western Alignment in Rosebud and Big Horn Counties, Montana**

Dear Mr. Williams:

U.S. Bank strongly supports Tongue River Railroad Company's application for approval of the Western Alignment.

The Western Alignment would be a significant boost to the economy of southeastern Montana, providing much needed jobs in this high unemployment area, increasing the tax base and revenues. Development of the Western Alignment provides access to a significant reserve of high-quality compliance coal; therefore creating an efficient source of fuel for this nations's energy needs.

If you would like to speak to us further about our support, please call (406) 657-8511. Thank you.

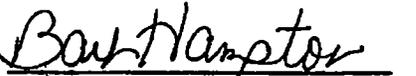
Sincerely,


Michael J. Hickey
State Manager - MT
2801 Brooks St.
Missoula, MT 59801


Mark L. Burnham
VP - Billings office
303 North Broadway
Billings, MT 59101


Martin J. Derrig
President - Billings office
303 North Broadway
Billings, MT 59101

SUBSCRIBED AND SWORN before me this 23 day of October, 1998


Notary Public for the State of Montana
Residing at: BILLINGS
My Commission Expires 10/20/01



LARRY'S IGA

P.O. Box 549 • 120 South Park
Broadus, Montana 59317
Phone 406-436-2288 • Fax 406-436-2338

VERNON A. WILLIAMS, SECRETARY
SURFACE TRANSPORTATION BOARD
1925 K STREET NW
WASHINGTON, D.C. 20423-0001

RE: FINANCE DOCKET 30186 (SUB NO. 3) TONGUE RIVER RAILROAD,
RAIL CONSTRUCTION AND OPERATION, WESTERN ALIGNMENT I ROSEBUD
AND BIG HORN COUNTIES, MONTANA.

DEAR MR. WILLIAMS,

THIS LETTER IS TO LEND MY SUPPORT AS A SMALL BUSINESS OWNER
IN POWDER RIVER COUNTY TO THE PROPOSED WESTERN ALIGNMENT BY
TONGUE RIVER RAILROAD CO.

OUR AREA HAS A GREAT DEAL TO GAIN FROM THE CONSTRUCTION OF THE
RAILROAD. OURS IS A LARGE GEOGRAPHIC AREA, SPARSELY POPULATED,
AND IN NEED OF THE TAX BASE THAT THIS DEVELOPMENT WOULD PROVIDE.
THE LARGE MAJORITY OF TAXPAYERS IN THIS COMMUNITY ARE IN
AGRICULTURE, AN INDUSTRY THAT HAS BEEN LONG SUFFERING AND COULD
MORE THAN USE THE TAX RELIEF.

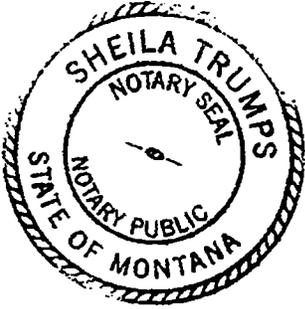
TIMELY APPROVAL OF THE WESTERN ALIGNMENT BY YOUR BOARD WOULD
SPEED UP THE PROCESS AND ALLOW THE PROJECT TO GO FORWARD. THE
WESTERN ALIGNMENT IS TWELVE MILES SHORTER, AFFECTS FEWER
LANDOWNERS AND MAKES BETTER ENVIRONMENTAL SENSE. OPPONENTS
OF THE ENTIRE RAILROAD ARE NO DOUBT GOING TO OPPOSE THIS
ALIGNMENT PRIMARILY TO DELAY CONSTRUCTION OF THE ENTIRE PROJECT
RATHER THAN THE MERITS OF THE ALIGNMENT ITSELF.

I AM,

A handwritten signature in cursive script that reads "Larry Woolston".

LARRY WOOLSTON, PRESIDENT
LARRYS'S IGA, INC.

Subscribed and sworn to before me this 22nd day of October,
1998.



Sheila Trumps
Notary Public State of Montana.
Residing at Broadus MT.
My Comm. expires 2/27/2000.

APPENDIX E

APPENDIX E

MISCELLANEOUS ATTACHMENTS

Coal Market Potential Study, Vol. I (excerpts)

Second Supplemental Response of TRRC to Great Northern's
First Set of Interrogatories, June 3, 1998 (excerpts)

COAL MARKET POTENTIAL AND
REGIONAL COMPETITIVENESS STUDY
SELECTED COAL FIELDS OF MONTANA
VOLUME I - RESULTS OF INVESTIGATION

Prepared for
Montana Department of Commerce
and
Office of the Governor, Economic Development Office
Helena, Montana

Prepared by
Stagg Engineering Services, Inc.
Natural Resource Consultants
Charleston, West Virginia and
Denver, Colorado

January, 1996

Job No. E508-126-101

SECTION I - INTRODUCTION

A. GENERAL

The State of Montana (the "State"), through its Department of Commerce, has requested an assessment be prepared of the future market demand for Montana coal production, and of the degree to which state-level public policies, primarily those involving taxation, influence the competitiveness of the State's coal in both domestic and international markets (the "Study"). The objective of the Study is to identify, to the extent possible, the competitive constraints and/or advantages current public policy is placing on the State's coal producers, and to determine whether such policies are likely to hinder or to promote development and extraction of the State's coal resources in the rapidly changing and intensely competitive markets anticipated in the future. The State's primary concerns are twofold:

- the impact its policies will have on future tax revenues for the Coal Severance Tax Trust fund, the Coal Gross Proceeds Tax which is distributed to local governments, and the Resource Indemnity and Ground Water Assessment Tax Fund ("RIGWAT"), and
- the impact that either diminished or expanded coal development and production would have on employment and on the demand for goods and services in the counties in which such changes occurred.

Information gathered in the Study will serve as input to policy-makers for possible modifications to public policies to ensure the optimum utilization of the State's coal resources and maximum economic and environmental benefits to the State's citizens. An assessment of future U.S. coal demand and the potential this offers for changes in demand and markets for the State's coal is particularly timely in view of the rapid evolution of factors which will likely have the most impact on domestic coal markets during the next ten years. Among these factors are the pending implementation of Phase II standards in 2000 under the Clean Air Act Amendments of 1990 ("1990 CAAA"), an expectation of significant growth in the export of thermal coal to Pacific Rim countries, the impending deregulation of the U.S. utility industry, the likely continuation

train" technology, a train set comprised of extended-length coal cars that give the unit-train a capacity of up to 17,000 tons, as opposed to conventional unit-trains hauling 11,000 to 13,000 tons. It can be assumed, however, that all or a major portion of the economic benefits resulting from further productivity improvements and reductions in operating costs will continue to be captured by the coal purchaser rather than by the coal producer.

A rail system that is proposed for development and that would have even greater direct impact on the Montana coal industry is the Tongue River Railroad ("TRR"). This proposed 130-mile line, which would extend from Miles City along the Tongue River and connect with the existing BNSF line that serves mine in the Decker area, has been promoted since the early 1980's as a means of reducing transportation costs for producers in the Decker area by shortening rail distance to consumers in the Upper Midwest supply region and to Midwest Fuels' lake terminal at Superior, Wisconsin. More importantly, it could be a critical factor in the development of coal reserves in the Ashland area where rail access does not currently exist. Most of the potential development projects identified in Section III and presented in detail in Appendix C (Figure 14) will not be initiated until a competitive means of moving coal from the Ashland area is present, and the TRR, either as presently proposed or in some variation, is an obvious way to accomplish this.

The TRR has a long and controversial history, and it is not the purpose of the Study to recount past developments, evaluate the vested interests of its supporters and its opponents, or assess its current potential for development. Accordingly, the conclusions of the Study Team with regard to the TRR and the impact its construction would have on the Montana coal industry during the Study Period are presented in summary fashion as follows:

- A rail line providing access to the Ashland area is mandatory for the development of the coal reserves situated there. It should be noted that an alternative means of access, which has been discussed, is the extension of the existing spur line of the BNSF from its terminus at Colstrip.

- Growth in market opportunities sufficient to justify development of the proposed mines in the Ashland area is not expected to occur before the period 2003 to 2005, the latter portion of the Study Period, with the limited growth in both new demand and in the opportunities to capture markets on a competitive basis forecast to occur prior to that time easily supplied by existing NPRB producers.

In addition to market issues, mines proposed for the Ashland area, at least during their initial years of operation, must be able to compete on the basis of production costs in order to divert capture market share from existing PRB producers.

The Study Team believes that while opportunities for new mine development based solely on growth in demand are likely, this will not occur until after 2010. Until that time, any new mine producing coal with heat content in the range anticipated for reserves in the Ashland area, even with extremely low sulfur content, will be required to compete aggressively against the production cost structure of existing mines.

- The discussion above concerning proposed new mine development suggests that even if a marginally competitive mine is developed prior to 2005, or even during the following two to three years, there is a significant probability that the mine would have a difficult start-up phase and would experience volatile levels of employment.
- Concerns over whether construction of the TRR would or would not make mines in the SPRB more competitive with mines in the NPRB, or would or would not give the mines in the SPRB an improved transportation advantage, are essentially irrelevant at this time, if traditional cost analysis on the basis of miles and cost/ton-mile are used, simply because it is not possible to make such a determination accurately.

The fact is that during the Study Period, the BNSF will be able to maintain sufficient pricing flexibility in both the NPRB and the SPRB so that it will continue to balance SPRB and NPRB deliveries, as required in order to optimize route capacity and profitability. Any market rents which may appear to a new producer to be available, and, indeed, which would be necessary to justify investment in a new mine, can easily be offset by changes in the transportation rates charged to competing mines. The reduction in rail haul distance which would result from construction of the TRR will not be sufficient to offset the BNSF's ability to influence respective market share between the Wyoming and Montana sides of the Powder River Basin in what it considers to be its own best interest.

- It is thus the conclusion of the Study Team that construction of the rail link envisioned by the TRR will move forward, if and when the project makes sense to the BNSF from the standpoint of logistics, capacity, and competition, and the railroad then becomes a supportive partner in spirit if not in ownership. Until that time, the project will continue to represent such risk that investment will be difficult to obtain.



BEFORE THE
SURFACE TRANSPORTATION BOARD

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

TONGUE RIVER RAILROAD COMPANY -- RAIL CONSTRUCTION
AND OPERATION -- WESTERN ALIGNMENT IN ROSEBUD
AND BIG HORN COUNTIES, MONTANA

SECOND SUPPLEMENTAL RESPONSE OF TONGUE
RIVER RAILROAD COMPANY TO GREAT
NORTHERN'S FIRST SET OF INTERROGATORIES

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Tongue River Railroad Company

Dated: June 3, 1998

the Application at pp. 8-9. Montco LLP is a Montana limited liability partnership comprised of the following partners: The Pittsburg & Midway Coal Mining Company and WestMont, Inc., a Montana corporation that is a wholly-owned subsidiary of Wesco Resources, Inc. Montco LLP's interest in the line's construction and operation is that its surface coal mine will be served by the line. See Verified Statement of Robert R. Golliver dated April 29, 1992, filed in Finance Docket No. 30186 (Sub-No. 2), Tongue River Railroad Company -- Construction and Operation of an Additional Rail Line from Ashland to Decker, Montana.

14. What, if any, has been the relationship between TRRC, any director or any officer of TRRC with The Pittsburgh & Midway Coal Mining Company [sic] and what, if any, was and is its interest in the Line's construction and operation?

Response: TRRC specifically objects to this interrogatory on the grounds of burden and relevance and, because the term "relationship" is susceptible of several meanings, vagueness. Subject to and without waiving any General Objection, see Application at 8. TRRC further states that it and The Pittsburg & Midway Coal Mining Company ("P&M") are separate entities. TRRC's ownership structure is set forth in the Application at pp. 8-9. P&M, which is a partner in Transportation Properties LLP (the general partner of TRRC) and which owns an interest in Tongue River Holdings, Inc. (the limited partner of TRRC), is a Missouri corporation that is affiliated with Chevron Corporation. P&M's interest in the line's construction and operation is that it is an owner and investor in TRRC.

15. Has TRRC purchased, leased or obtained easements to operate over any part of the right-of-way for the Line's construction and operation and, if so, what are parcels that have been acquired, identifying the origin and termination points of each segment of the right-of-way?

Response: TRRC specifically objects to this interrogatory on the ground of relevance to the extent it seeks information regarding portions of TRRC's approved lines that are not the subject of the Application. Subject to and without waiving any General Objection, see TRRC's response to Interrogatory No. 7 above. In addition, TRRC states that it has obtained an easement deed from the United States Department of Agriculture over land occupied by the Fort Keogh Livestock and Range Research Station in Miles City, Montana. The starting point for the easement is Milepost 0.76 and the ending point is Milepost 10.27. TRRC clarifies that this supplemental response is being provided for the entire Decker to Miles City, Montana line, not just the Western Alignment.

16. Has TRRC contracted for the grading of the cuts and fills, construction of the bridges and tunnels, installation of the ties and track and otherwise completing the building of the Line, and, if so, what are the names, addresses and telephone numbers of the company or companies which TRRC has engaged to perform the work required for the completion of the Line's construction and when are they contractually committed to complete their assignments?

Response: TRRC specifically objects to this interrogatory on the ground of relevance to the extent it seeks information regarding portions of TRRC's approved lines that are not the subject of the Application. Subject to and without waiving any General Objection, see Application at 12. In addition, TRRC states that it has entered into a letter of mutual agreement with Granite Construction Company to construct its approved lines through a design/build approach. The parties are continuing negotiations toward a mutually acceptable design/build contract. TRRC clarifies that this supplemental response is being provided for the entire Decker to Miles City, Montana line, not just the Western Alignment.

Respectfully submitted,

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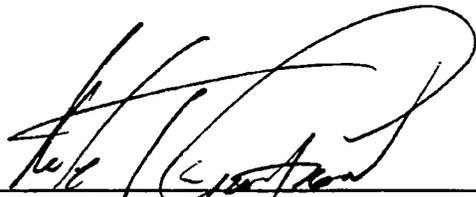
Attorneys for Tongue River Railroad Company

Dated: June 3, 1998

VERIFICATION

STATE OF MONTANA)
) ss:
COUNTY OF YELLOWSTONE)

Mike T. Gustafson, being first duly sworn, deposes and says he has read the foregoing Second Supplemental Response of Tongue River Railroad Company to Great Northern's First Set of Interrogatories, knows the contents thereof, and that the same are true and correct to the best of his knowledge and belief.



Mike T. Gustafson

SUBSCRIBED AND SWORN TO before me this 29th day of May, 1998.



Notary Public for the State of Montana
Residing at B. Hings
My commission expires: 5/19/01

SEAL