

## **The Tongue River Railroad White Paper for the Montana Environmental Quality Council**

**Issue:** On October 5, 2006, the Surface Transportation Board's Section of Environmental Analysis published the Final Supplemental Environmental Impact Statement (Final SEIS) for the Board's Tongue River III proceeding (STB Docket # FD 30186-3). A decision from the Board is imminent. If the decision approves plans for construction of this portion of the Tongue River W o a d , the "Western Alignment," it will set in motion a chain of events allowing the Tongue River Railroad Company to **begin** construction of the entire **railway**, a project that will have a serious environmental impact on tens of thousands of acres of productive rangeland and the entire Tongue River watershed, as well as grave economic and social consequences on the ranchers who depend on this land for **their** livelihoods, and on the State of Montana as a whole.

### **Recommendation:**

The EQC should appoint a special subcommittee or **working** group to study the Tongue River Railroad and to hold hearings on the project. The study needs to be conducted during the 2007-08 interim, while the State **still** has maximum opportunity to impact the outcome of the project. As part of its study, the EQC should consider legislation prohibiting the use of eminent domain to obtain land for the project.

### **Background:**

The Tongue River W o a d Company (TRRC) is attempting to build a rail line from Miles City to Decker, the purpose of which is to provide for the transport of coal from existing and future mines in the Powder River Basin and Tongue River **Valley** to markets in the midwestern and northeastern states. Information on the TRRC and other stakeholders and interested parties is included at Appendix A, Tongue River Railroad - Interested Parties.

The Tongue River W o a d Company (TRCC) project has been previously considered by the Surface Transportation Board (the Board) in two separate proceedings known as Tongue **River I** and Tongue **River II**. In Tongue **River I**, TRRC's **original** application filed in 1983, TRRC sought approval from the Interstate Commerce Commission (ICC), the Board's predecessor agency, to **construct** and operate 89 miles of rail line between Miles City, Montana and two **termini** located near **Ashland**, Montana. In a decision served May 9, 1986, the ICC approved Tongue **River I**. TRRC filed another application in 1991 for Tongue **River II**, seeking approval to extend the line from **Ashland** to Decker. Two build alternatives were considered in that case: TRRC's preferred route and the Four Mile Creek Alternative. The Board approved Tongue **River II**, authorizing construction of 41 **miles** of rail line via the Four Mile Creek Alternative, in a decision served on November 8, 1996.

Tongue **River I** is **administratively** complete. Although the Tongue **River I** decision was served over 20 years ago, the TRCC has never undertaken any construction or construction-related activities.

Tongue **River II** is pending judicial review in the 9<sup>th</sup> Circuit Court of Appeals (Northern Plains Resource Council, Inc. v. STB, Nos. 97-70037 et al., filed Jan. 7, 1997). The court proceeding is being held in abeyance pending the completion of Tongue **River III**. Background information on Petitioner Northern Plains Resource Council as well as the United Transportation Union and Native Action, Inc., who have intervened in the 9<sup>th</sup> Circuit action on behalf of the Petitioner, are included at Appendix A.

On April 27, 1998 the TRCC applied to the Board for authorization to construct and operate 17.3 miles of rail line known as the proposed Western **Alignment**, also referred to as Tongue River III. A Final SEIS for Tongue River III was published on October 5, 2006 and a decision from the Board is imminent.

Actual construction of the lines approved in Tongue River I and Tongue River II has not yet begun. However, TRRC has conducted various preconstruction activities on both lines, including test **borings** to obtain more **specific** geotechnical information.

Analysis:

The Tongue River Railroad project, which will have a permanent, irreversible impact on tens of thousands of acres of the most pristine land in Montana, is in clear violation of the National Environmental Policy Act (NEPA). Rather than having the impact of the entire project evaluated as a whole by a single Environmental Impact Statement, the project has been segmenting into three separate proceedings before the Surface Transportation Board over the past 24 years (one of the bases of the current **9<sup>th</sup> Circuit litigation**). The fact that no construction ever took place in the two decades following approval of Tongue River I is proof that the Tongue River Railway is in fact a single project, that Tongue River I has no practical value without Tongue River II and III.

The bulk of the **railroad** is covered by the EIS for Tongue River I, which was completed in 1983 and relies on research going back to the 1970's. Most of the current Final SEIS for Tongue River III relies on the data in the **TRR II** EIS was published in 1992, with most of the data coming from the **1980's**. There have been numerous changes throughout the entire Tongue River Valley over the past 30 years, and the Surface Transportation Board errs in assuming that the data are still **valid**.

The recently released Final SEIS **ignores** the cumulative impacts of a variety of key environmental issues including coal bed methane. The cumulative air quality effects of the **railroad** combined with the impacts of a number of power plants and other facilities have also not been fully considered. In addition, most of the **information** on the impacts on wildlife are well out of date.

The Montana State government has never studied the project to evaluate its environmental impact or alleged economic justification to support the Railroad. The Tongue River Railroad was discussed during a review of eminent domain statutes during Governor Radcot's administration in late 1999 and early 2000, when the Montana Legislature's Environmental **Quality** Council (EQC) and Law, **Justice** and Indian **Affairs** Interim Subcommittee held **hearings** on eminent domain. But these hearings focused exclusively on possible adjustments to eminent domain laws, and addressed neither the merits of the **railroad** nor its apparent violation of NEPA.

## Tongue River Railroad - Interested Parties

### A. Stakeholders and Potential Investors

1. The Tongue River **Railroad** Company: Mission is to provide "new transportation to an estimated 3.7B tons of coal reserves in southeastern Montana and a mine spur to the Otter Creek **Tracts**."<sup>1</sup>
2. Wesco Resources: A consortium developing plans for a mine, an electrical generation plant, and the railroad at Otter Creek. Wesco consists of Madison Resources LLC<sup>2</sup>, CoalMont LLC (see item 3 below), and the Tongue River **Railroad** Company.
3. CoalMont LLC: Created specifically to seek the leases to the southeast Montana coal, i.e. to acquire and develop coal reserves in the **Ashland** and Otter Creek areas. Consists of Madison Resource Management and **GeoCoal**.
4. Otter Creek Energy Project. A consortium of companies "working together to conduct feasibility studies to address the elements necessary to sponsor new phased coal-fired electrical generation in southeastern Montana." The first phase would include a 750-megawatt coal-fired generator, a 100-mile power line to tie in to the existing transmission grid, and a 3-million-ton-per-year coal mine for the power plant, with the electricity being sold in Montana and the Pacific Northwest. An estimated completion date is 2008-10. Consists of Wesco Resources, Bechtel, Kennecot Energy, and BNSF (affiliated in an advisory capacity).
5. BNSF Railway: The Tongue River Railway is intended to interconnect to the existing BNSF system at both the north and south ends.
6. Great Northern Properties (GNP): The single largest private owner of coal in the United States with 20 billion tons in reserve. GNP Owns those Otter Creek **Tracts** which do not belong to the state of Montana.
7. Great Northern Power Development. Chuck **Kerr**, President of Houston-based Great Northern Properties, is also the CEO Great Northern Power Development, which is planning a coal-fired generating plant west of Circle, Montana.

### B. 9<sup>th</sup> Circuit Plaintiffs

1. Northern Plains Resource Council (NPRC): a grassroots conservation and family **agriculture** group that organizes Montana citizens to protect water quality, family farms and ranches, and their unique quality of life. NPRC objects to the Tongue River **Railroad** based on the fact that the string of **EIS**'s dating back to 1983 do not consider the **railroad** as a whole and do not consider the cumulative effects of the railroad with coal bed methane extraction.

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<sup>1</sup> **Vicinity Ashland**. 530M tons of Federal coal ownership was transferred to the State of Montana by **HR2107** – the transfer was completed in 2002.

<sup>2</sup> Madison Resources includes Mike Gustafson (President of Wesco); Pat Davison, and Doug Day

2. Native Action: a non-profit community empowerment **organization** located on the Northern **Cheyenne** Indian Reservation in southeastern Montana. Founded in **1984** by members of the Northern Cheyenne Indian Tribe, Native Action calls itself a "leading model for citizen empowerment on Indian Reservations." Its missions include addressing major environmental and social justice issues in Montana, including coal mining and gasification.

3. United Transportation Union: opposes the new rail link because it believes railroad jobs would be lost on the existing BNSF line which serves the area.

C. Parties to STB Docket # FD 30186-3 (Tongue River III)

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#### D. Non-Party Opponents to the Tongue River Railroad

1. Senator Greg **Lind**
2. Senator Robert Hawks
3. Jerry **Lunde**, Decker Montana (Landowner)
4. Ray **Muggli**, Miles City Montana (Landowner)
5. Alice **Orr**, Bimey Montana (Landowner)

6. Phil and Denise Wood, **Birney** Montana (Diamond Cross Ranch Managers)

7. American Prairie Foundation: mission is to "create and manage a prairie-based wildlife reserve that, when combined with public lands already devoted to wildlife, **will** protect a unique natural habitat, provide lasting economic benefits, and improve public access to and enjoyment of the prairie landscape."

8. Trout Unlimited: mission is to "conserve, protect and restore North America's coldwater fisheries and their watersheds."

9. World Wildlife Fund: mission is "the conservation of nature . . . **using** the best available **scientific** knowledge and advancing that knowledge . . . to preserve the diversity and abundance of life on Earth and the health of **ecological** systems.

E. Other Relevant State, Federal, and Tribal Entities

1. U.S. Environmental Protection Agency

2. U.S. Fish and Wildlife **Service**

3. Montana Fish, Wildlife, & Parks

4. Crow Tribe

5. Northern Cheyenne Tribe