



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 30186]

Tongue River Railroad Company, Inc.—Rail Construction and Operation—in Custer, Powder River and Rosebud Counties, Mont.

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of Intent to Prepare an Environmental Impact Statement; Notice of Availability of the Draft Scope of Study for the Environmental Impact Statement; Notice of Scoping Meetings; and Request for Comments on Draft Scope.

**SUMMARY:** On October 16, 2012, Tongue River Railroad Company, Inc. (TRRC) filed a revised application with the Surface Transportation Board (Board) pursuant to 49 U.S.C. 10901 in Docket No. FD 30186. TRRC intends to construct and operate an approximately 80-mile rail line between Miles City, Montana, and two ending points, one near the site of the previously planned Montco mine near Ashland, Montana, and another at the proposed Otter Creek mine in the Otter Creek area east of Ashland, Montana. Because the construction and operation of this project has the potential to result in significant environmental impacts, the Board's Office of Environmental Analysis (OEA) has determined that the preparation of an Environmental Impact Statement (EIS) is appropriate pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*). The purpose of this Notice of Intent is to notify stakeholders—including members of the public; Tribes; federal, state, and local agencies; environmental groups; and potential shippers—interested in or potentially affected by the

proposed project of the decision to prepare an EIS. OEA will hold public scoping meetings as part of the NEPA process. Oral and written comments submitted during scoping will assist OEA in defining the range of actions, alternatives, and impacts to be considered in the EIS. To begin the scoping process, OEA has developed a Draft Scope of Study for the EIS for review and comment. Public meeting dates and locations, along with the Draft Scope of Study, are provided below.

### **BACKGROUND:**

In 1986, the Board's predecessor agency, the Interstate Commerce Commission (ICC) gave approval to TRRC to build and operate an 89-mile rail line between Miles City, Montana, and two termini located near Ashland, Montana, a proceeding known as Tongue River I.<sup>1</sup> The purpose of the line was to serve new coal mines in the Ashland area. In 1996, the Board authorized TRRC to build a contiguous 41-mile rail line from Ashland to Decker, Montana, in Tongue River II.<sup>2</sup> In 2007, the Board authorized TRRC to build and operate the Western Alignment, a 17.3-mile alternate route for a portion of the route already approved in Tongue River II in a proceeding known as Tongue River III.<sup>3</sup> The ICC/Board's environmental staff, now OEA, prepared EISs in all three proceedings.

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<sup>1</sup> Tongue River R.R.—Rail Construction and Operation—In Custer, Powder River and Rosebud Cntys., Mont. (Tongue River I), FD 30186 (ICC served Sept. 4, 1985), modified (ICC served May 9, 1986), pet. for judicial review dismissed, N. Plains Res. Council v. ICC, 817 F.2d 758 (9th Cir.), cert. denied, 484 U.S. 976 (1987).

<sup>2</sup> Tongue River R.R.—Rail Construction and Operation—Ashland to Decker, Mont. (Tongue River II), 1 S.T.B. 809 (1996), pet. for reconsid. denied (STB served Dec. 31, 1996).

<sup>3</sup> Tongue River R.R.—Rail Construction and Operation—Ashland to Decker, Mont. (Tongue River III), FD 30186 (Sub-No. 3) (STB served Oct. 9, 2007), pet. for reconsid. denied (STB served Mar. 13, 2008).

Petitions for review of the last two decisions, Tongue River II and Tongue River III, were filed in the United States Court of Appeals for the Ninth Circuit, and, in 2011, the court affirmed in part, and reversed and remanded in part, those decisions for additional environmental review.<sup>4</sup> The court's decision requires the Board to revisit the environmental analysis for Tongue River I because the Board had conducted a cumulative impacts analysis for the entire line in Tongue River III and made the resulting mitigation conditions applicable to the entire line in its Tongue River III decision. TRRC then informed the Board that it no longer intended to build the Tongue River II and Tongue River III portions of the railroad.

On June 18, 2012, the Board issued a decision dismissing the Tongue River II and Tongue River III proceedings and reopening Tongue River I.<sup>5</sup> As explained in more detail in that decision (which is available on the Board's website at [www.stb.dot.gov](http://www.stb.dot.gov)), the Board required TRRC to file a revised application that presents the railroad's current plans to build a rail line between Miles City and Ashland, Montana. In addition, the Board decided to conduct a new environmental review rather than a supplemental environmental review based on the three prior environmental reviews that began in the 1980s. The Board found that a new EIS (including a new scoping process) is appropriate given the passage of time since Tongue River I was decided, the railroad's failure to begin construction of any part of this railroad and other changes that have taken place, the nature of the court's partial remand, and the fact that most of the Board's more recent environmental analysis pertains to Tongue River II or Tongue River III, neither of which

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<sup>4</sup> See N. Plains Res. Council v. STB, 668 F.3d 1067 (9th Cir. 2011).

<sup>5</sup> Tongue River R.R.--Rail Constr. & Operation—In Custer, Powder River & Rosebud Cnty., Mont., FD 30186 et al. (STB served June 18, 2012).

the railroad still proposes to build. The Board also stated that a new EIS will encourage and facilitate public participation.<sup>6</sup>

TRRC filed its revised application on October 16, 2012. This Notice of Intent initiates the new EIS process and scoping for this case.

**Dates and locations:** The public scoping meetings will be held at the following locations on the dates listed:

- November 12, 2012, 2-4 pm & 6–8 pm at the Charging Horse Casino, Bingo Hall, ½ Mile E Lame Deer Highway 212, Lame Deer, MT 59043.
- November 13, 2012, 2-4 pm & 6–8 pm at the Rosebud County Library, 201 North 9<sup>th</sup> Avenue, Forsyth, MT 59327.
- November 14, 2012, 2-4 pm & 6–8 pm at the St. Labre Indian School Auditorium, 1000 Tongue River Road, Ashland, MT 59003.
- November 15, 2012, 2-4 pm & 6–8 pm at the Elks Lodge #537, 619 Pleasant Street, Miles City, MT 59301.

The scoping meetings will be held in an open house format for the first hour with the second hour comprised of a brief presentation by OEA followed by public comments. The meeting locations comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*). Persons that need special accommodations should telephone OEA's toll-free number for the project at 1-866-622-4355.

Interested parties are invited to submit written comments on the Draft Scope of Study, potential alternative routes for the proposed rail line, and other environmental issues and concerns by December 6, 2012, to assure full consideration during the scoping

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<sup>6</sup> Id. at 9-10.

process. OEA will issue a Final Scope of Study after the close of the scoping comment period.

**Summary of the Board’s Environmental Review Process:** The NEPA process is intended to assist the Board and the public in identifying and assessing the potential environmental consequences of a proposed action before a decision on the proposed action is made. OEA is responsible for ensuring that the Board complies with NEPA and related environmental statutes. The first stage of the EIS process is scoping. Scoping is an open process for determining the scope of environmental issues to be addressed in the EIS. As part of the scoping process, OEA has developed, and has made available for public comment in this notice, a Draft Scope of Study for the EIS. Scoping meetings will be held in the project area to provide further opportunities for public involvement and input during the scoping process.

In addition to comments on the Draft Scope of Study, interested parties are also encouraged to comment on potential routes for the proposed project. TRRC’s application included an approximately 80-mile alignment similar to the one permitted in 1986 in Tongue River I. TRRC has made what it calls “minor curve adjustments” to this alignment, which include moving the rail centerline slightly further from the Miles City Fish Hatchery and straightening the rail line in the Otter Creek area.<sup>7</sup> OEA is interested in scoping comments on potential alternatives to TRRC’s proposed alignment, including, at a minimum, those analyzed in the EIS in Tongue River I. Those alternatives included:

- **Tongue River Road Alternative** – This route would depart Miles City along the 1986 proposed route, and continue along that route to a point just north of

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<sup>7</sup> TRRC Application at 3.

Pumpkin Creek. There it crosses the Tongue River, turns south and continues along the east side of the river to join the proposed route about 10 miles north of Ashland.

- **Moon Creek Alternative** – This route would leave Miles City, following the old Milwaukee Road alignment to the west, crossing the Yellowstone River and following the north bank for about 8 miles. Here, the route would again cross the Yellowstone and follow the east side of Moon Creek to the divide separating the Tongue and Yellowstone River drainages. From there, the route would descend to the Tongue River Valley floor and join the proposed route about 14 miles south of Miles City. This route would cross the western edge of the Fort Keogh United States Department of Agriculture (USDA) Agriculture Research Service (ARS) rangeland beef cattle research facility.
- **Colstrip Alternative** – This route would leave the existing Cow Creek branch of BNSF at Colstrip, crossing Cow Creek and Rosebud Creek as it heads south and east, following the Greenleaf Creek valley to the Rosebud Creek/Tongue River divide. From there it descends into the Tongue River valley and joins the proposed route at the Tongue River crossing north of Ashland.

At the conclusion of the scoping and comment period, OEA will issue a Final Scope of Study for the EIS.

After issuing the Final Scope of Study, OEA will prepare a Draft EIS for the project. The Draft EIS will address the environmental issues and concerns identified during the scoping process and assess and compare potential alternatives. It will also contain OEA's preliminary recommendations for environmental mitigation measures.

The Draft EIS will be made available upon its completion for review and comment by the public, government agencies, and other interested parties. OEA will prepare a Final EIS that considers comments on the Draft EIS. In reaching its decision in this case, the Board will take into account the Draft EIS, the Final EIS, and all environmental comments that are received.

OEA has invited several agencies to participate in this EIS process as cooperating agencies on the basis of their special expertise or jurisdiction by law. These agencies include: the U.S. Army Corps of Engineers (Corps); the Department of the Interior (DOI), Bureau of Land Management (BLM); USDA; and the Montana Department of Natural Resources and Conservation (MT DNRC). OEA is also initiating government-to-government consultation with potentially affected tribes, including the Northern Cheyenne, the Crow, and several bands of the Great Sioux Nation.

**Filing Environmental Comments:** Scoping comments submitted by mail should be addressed to: Ken Blodgett, Surface Transportation Board, 395 E Street, SW, Washington, D.C. 20423-0001, Attention: Environmental filing, Docket No. FD 30186.

Scoping comments may also be filed electronically on the Board's web site, <http://www.stb.dot.gov>, by clicking on the "E-FILING" link.

Please refer to **Docket No. FD 30186** in all correspondence, including e-filings, addressed to the Board.

Scoping Comments are due by **December 06, 2012**.

**FOR FURTHER INFORMATION CONTACT:** Ken Blodgett, Office of Environmental Analysis, Surface Transportation Board, 395 E Street, SW, Washington, DC 20423, or call OEA's toll-free number for the project at 1-866-622-4355. Assistance

for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339. The website for the Board is [www.stb.dot.gov](http://www.stb.dot.gov). Project specific information on the Board's website may be found by placing your cursor on the "Environmental Matters" button, then clicking on the "Key Cases" button in the drop down menu. For further information about the Board's environmental review process and this EIS, you may also visit a Board-sponsored project Web site at [www.tonguerivereis.com](http://www.tonguerivereis.com).

## **DRAFT SCOPE OF STUDY FOR THE EIS**

### **Purpose and Need**

As described in TRRC's application, the principal purpose of the construction and operation of TRRC's proposed rail line is to transport low sulfur, sub-bituminous coal from the proposed mine sites in Rosebud and Powder River Counties, Montana, including the proposed mines in the Otter Creek area.<sup>8</sup>

The proposed transaction involves an application by TRRC for a license or approval from the Board. The proposed transaction is not a federal government-proposed or sponsored project. Thus, the project's purpose and need should be informed by both the private applicant's goals and the agency's enabling statute here, 49 U.S.C. 10901. Section 10901 provides that the Board must approve a construction application unless it finds that the construction is "inconsistent with the public convenience and necessity."

### **Proposed Action and Alternatives**

The proposed rail line would extend from Miles City, Montana, to Ashland/Otter Creek, Montana. It would consist of a single track constructed of continuous-welded rail.

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<sup>8</sup> Id.

Other major elements of the proposed project would include a 200-foot-wide right-of-way; crossings of local roads, streams, trails, and utility corridors; two passing sidings one near Milepost 27 and the other near Milepost 46; and ancillary facilities, including six set-out racks between 500 and 4000 feet in length to provide for temporary storage of cars requiring repair and for storage of maintenance equipment.<sup>9</sup>

The anticipated train traffic between Miles City and Ashland on the proposed rail line would consist of 26 round trips per week, or 3.7 loaded unit coal trains daily on average, with 7.4 trains per day total (empty and loaded).<sup>10</sup> The EIS will analyze and compare the potential impacts of (1) construction and operation of the proposed rail line, (2) all reasonable and feasible alternative routes, and (3) the no-action alternative (denial of the application).

## **Environmental Impact Analysis**

### **Proposed New Construction and Operation**

Analysis in the EIS will address the proposed activities associated with the construction and operation of new rail facilities and their potential environmental impacts, as appropriate.

### **Impact Categories**

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<sup>9</sup> Id. at 13.

<sup>10</sup> Id. Exhibit D at 2.

The EIS will analyze potential direct, indirect, and cumulative impacts<sup>11</sup> for TRRC’s proposed construction and operation and each reasonable and feasible alternative on the human and natural environment, or in the case of the no-action alternative, the lack of these activities. Impact areas addressed will include the categories of transportation systems, safety, land use, recreation, biological resources, water resources, including wetlands and other waters of the U.S., navigation, geology and soils, air quality, noise, energy resources, socioeconomics as they relate to physical changes in the environment, cultural and historic resources, aesthetics and environmental justice. Other categories of impacts may also be included as a result of comments received during the scoping process or on the Draft EIS. The EIS will include a discussion of each of these categories as they currently exist in the project area and will address the potential direct, indirect impacts, and cumulative impacts of TRRC’s proposed route and each reasonable and feasible alternative on each category as described below:

**1. Transportation Systems**

The EIS will:

- a. Evaluate the potential impacts resulting from TRRC’s proposed route and each alternative on the existing transportation network in the project area.
- b. Propose mitigative measures to minimize or eliminate potential project impacts to transportation systems, as appropriate.

**2. Safety**

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<sup>11</sup> NEPA requires the Board to consider direct, indirect, and cumulative impacts. Direct and indirect impacts are both caused by the action. 40 CFR 1508.8(a)-(b). A cumulative impact is the “incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions.” 40 CFR 1508.7.

The EIS will:

- a. Describe existing road/rail grade crossing safety and analyze the potential for an increase in accidents related to the proposed new rail operations, as appropriate.
- b. Describe existing rail operations and analyze the potential for increased probability of train accidents, as appropriate.
- c. Evaluate the potential for disruption and delays to the movement of emergency vehicles.
- d. Propose mitigative measures to minimize or eliminate potential project impacts to safety, as appropriate.

**3. Land Use**

The EIS will:

- a. Evaluate potential impacts of TRRC's proposed route and each alternative on existing land use patterns within the project area and identify those land uses that would be potentially impacted by the proposed new rail line construction.
- b. Analyze the potential impacts associated with each alternative to land uses identified within the project area. Such potential impacts may include incompatibility with existing land use and conversion of land to railroad use.
- c. Propose mitigative measures to minimize or eliminate potential impacts to land use, as appropriate.

**4. Recreation**

The EIS will:

- a. Evaluate existing conditions and the potential impacts of TRRC's proposed route and each alternative, and their operation, on recreational trails, and other recreational opportunities provided in the project area.
- b. Propose mitigative measures to minimize or eliminate potential project impacts on recreational opportunities, as appropriate.

## **5. Biological Resources**

The EIS will:

- a. Evaluate the existing biological resources within the project area, including vegetative communities, wildlife, fisheries, wetlands, and federal and state threatened or endangered species, and analyze the potential impacts to these resources resulting from each alternative.
- b. Describe any wildlife sanctuaries, refuges, national or state parks, forests, or grasslands, and evaluate the potential impacts to these resources resulting from TRRC's proposed route and each alternative.
- c. Propose mitigative measures to avoid, minimize, or compensate for potential impacts to biological resources, as appropriate.

## **6. Water Resources**

The EIS will:

- a. Describe the existing surface water and groundwater resources within the project area, including lakes, rivers, streams, stock ponds, wetlands, and floodplains and analyze the potential impacts on these resources resulting

from TRRC's proposed route and each alternative.

- b. Describe the permitting requirements for the various alternatives with regard to wetlands, stream and river crossings, water quality, floodplains, and erosion control.
- c. Propose mitigative measures to avoid, minimize, or compensate for potential project impacts to water resources, as appropriate.

## **7. Navigation**

The EIS will:

- a. Identify existing navigable waterways within the project area and analyze the potential impacts on navigability resulting from TRRC's proposed route and each alternative.
- b. Describe the permitting requirements for the various alternatives with regard to navigation.
- c. Propose mitigative measures to minimize or eliminate potential impacts to navigation, as appropriate.

## **8. Geology and Soils**

The EIS will:

- a. Describe the geology, soils and seismic conditions found within the project area, including unique or problematic geologic formations or soils, prime farmland, and hydric soils, and analyze the potential impacts on these resources resulting from TRRC's proposed route and each alternative.
- b. Evaluate potential measures employed to avoid or construct through

unique or problematic geologic formations or soils.

- c. Propose mitigative measures to minimize or eliminate potential project impacts to geology and soils, as appropriate.

## **9. Air Quality**

The EIS will:

- a. Evaluate the air emissions from the potential operation of trains on the TRRC rail line, including potential greenhouse gas emissions and coal dust, as appropriate.
- b. Evaluate the potential air quality impacts resulting from new rail line construction activities.
- c. Propose mitigative measures to minimize or eliminate potential project impacts to air quality, as appropriate.

## **10. Noise and Vibration**

The EIS will:

- a. Describe the potential noise and vibration impacts during new rail line construction resulting from TRRC's proposed route and each alternative.
- b. Describe the potential noise and vibration impacts of new rail line operation resulting from each alternative.
- c. Propose mitigative measures to minimize or eliminate potential project impacts to sensitive noise receptors, as appropriate.

## **11. Energy Resources**

The EIS will:

- a. Describe and evaluate the potential impact of the proposed new rail line on

the distribution of energy resources in the project area resulting from TRRC's proposed route and each alternative, including petroleum and gas pipelines and overhead electric transmission lines.

- b. Propose mitigative measures to minimize or eliminate potential project impacts to energy resources, as appropriate.

## **12. Socioeconomics**

The EIS will:

- a. Analyze the effects of a potential influx of construction workers to the project area and the potential increase in demand for local services interrelated with natural or physical environmental effects.
- b. Propose mitigative measures to minimize or eliminate potential project-related adverse impacts to social and economic resources, as appropriate.

## **13. Cultural and Historic Resources**

The EIS will:

- a. Identify historic building, structures, sites, objects or districts, eligible for listing on or listed on the National Register of Historic Places within the area of potential effects for TRRC's proposed route and each alternative (built-environment historic properties) and analyze potential project impacts to them.
- b. Identify properties of traditional religious and cultural importance to Indian Tribes (TCPs) and prehistoric or historic archaeological sites evaluated as potentially eligible, eligible, or listed on the National Register of Historic Places (archaeological historic properties) within the area of

potential effects for TRRC's proposed route and each alternative, and analyze potential project impacts to them.

- c. Propose measures to avoid, minimize, or mitigate potentially adverse project impacts to TCPs and built-environment, archaeological historic properties, and cultural and historic resources, as appropriate.

#### **14. Aesthetics**

The EIS will:

- a. Describe the potential impacts of the proposed new rail line construction on any areas identified or determined to be of high visual quality.
- b. Describe the potential impacts of the proposed new rail line construction on any waterways considered for or designated as wild and scenic.
- c. Propose mitigative measures to minimize or eliminate potential project impacts on aesthetics, as appropriate.

#### **15. Environmental Justice**

The EIS will:

- a. Evaluate the potential impacts resulting from TRRC's proposed route and each alternative on local and regional minority and low-income populations.
- b. Propose mitigative measures to minimize or eliminate potential project impacts on environmental justice populations, as appropriate.

Decided: October 17, 2012.

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.

Jeffrey Herzig

Clearance Clerk

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