

cumulative and growth-inducing impacts. Impacts will be evaluated for both the temporary construction period and for the long-term operation of each alternative. Measures to mitigate any adverse impacts will also be identified.

To ensure that the full range of issues related to this proposed action will be addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS/EIR should be directed to the SMART Project Director as noted in the **ADDRESSES** section above.

#### V. FTA Procedures

To streamline the NEPA process and to avoid duplication of effort, the agencies involved in the scoping process will consider the results of any previous planning studies or financial feasibility studies prepared in support of the decision by the Metropolitan Transportation Commission (MTC) to include a particular alternative in the regional transportation plan. Prior transportation planning studies may be pertinent to establishing the purpose and need for the proposed action and the range of alternatives to be evaluated in detail in the EIS/EIR. The Draft EIS/EIR will be prepared simultaneously with conceptual engineering for the alternatives, including station and alignment options. The Draft EIS/EIR process will address the potential use of federal funds for the proposed action, as well as assessing social, economic, and environmental impacts of the station and alignment alternatives. Station designs and alignment alternatives will be refined to minimize and mitigate any adverse impacts. After publication, the Draft EIS/EIR will be available for public and agency review and comment, and a public hearing will be held. Based on the Draft EIS/EIR and comments received, SMART will select a Locally Preferred Alternative for further assessment in the Final EIS/EIR and will apply for FTA approval to initiate Preliminary Engineering of the preferred alternative.

Issued on: August 19, 2003.

**Leslie T. Rogers,**

*Regional Administrator.*

[FR Doc. 03-21604 Filed 8-21-03; 8:45 am]

**BILLING CODE 4910-57-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

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

#### Tongue River Railroad Co.— Construction and Operation—Western Alignment

**AGENCY:** Surface Transportation Board.

**ACTION:** Amended Final Scope of the Supplemental Environmental Impact Statement.

**SUMMARY:** On April 27, 1998, the Tongue River Railroad Company (TRRC) filed an application with the Surface Transportation Board (Board) under U.S.C. 10901 and 49 CFR 1150.1 through 1150.10 seeking authority to construct and operate a 17.3-mile line of railroad in Rosebud and Big Horn Counties, Montana, known as the "Western Alignment." The line that is the subject of this application is an alternative routing for the portion of the 41-mile Ashland to Decker, Montana rail line that was approved by the Board on November 8, 1996 in Finance Docket No. 30186 (Sub-No. 2), referred to as the "Four Mile Creek Alternative." On July 10, 1998, the Board's Section of Environmental Analysis (SEA) served a Notice of Intent to prepare a Supplemental Environmental Impact Statement (SEIS) to evaluate and consider the potential environmental impacts that might result from the construction and operation of the Western Alignment, and requested comments on the scope of the SEIS. SEA served its final scope of the SEIS on February 3, 1999. On March 2, 2000, before SEA completed its Draft SEIS, TRRC requested that SEA suspend its environmental work. On December 19, 2002, TRRC advised SEA that it was now in a position to move forward and asked SEA to resume its environmental review of the application. On January 17, 2003, TRRC filed a request with the Board seeking to update its previously submitted evidence on the transportation merits. The Board served its decision allowing TRRC to file its supplemental evidence on the transportation merits on March 11, 2003. On March 26, 2003, SEA served an amended Notice of Intent to prepare a SEIS and requested comments on the adequacy of the final scope of the SEIS dated February 3, 1999. SEA has reviewed and considered all eight of the comments received in preparing the amended final scope of the SEIS, which is discussed below.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Blodgett, (202) 565-1554. Federal Information Relay Service

(FIRS) for the hearing impaired: 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Proposed Action and Background

This proceeding involves an alternate route (the Western Alignment) to the route the Board previously approved (the Four Mile Creek Alternative) for the southernmost 17.3-mile portion of the Ashland to Decker, Montana line in *Tongue River II*.

In 1983, TRRC sought approval from the Interstate Commerce Commission (ICC, the Board's predecessor agency) to construct and operate 89 miles of railroad between Miles City, Montana, and two termini located near Ashland, Montana, subsequently referred to as *Tongue River I*. In a decision served May 9, 1986, the ICC approved *Tongue River I*. TRRC then sought, in *Tongue River II*, approval to construct a contiguous 41-mile line from Ashland to Decker, Montana. The Board approved *Tongue River II*, via the Four Mile Creek Alternative, in November 1996.<sup>1</sup>

The ICC/Board's environmental staff, now the Section of Environmental Analysis (SEA), prepared Environmental Impact Statements (EISs) for both *Tongue River I* and *Tongue River II*. TRRC has reported to the Board that it has conducted various preconstruction activities on both segments, but actual construction has not yet begun.

On April 27, 1998, TRRC filed an application with the Board in Finance Docket No. 30186 (Sub-No. 3) seeking authority to construct and operate the Western Alignment subsequently referred to as *Tongue River III*. In *Tongue River I* and *Tongue River II*, the Board determined that the public convenience and necessity required or permitted TRRC's proposed rail line construction and operation, in accordance with former 49 U.S.C. 10901, and the Board does not intend to reopen the transportation merits of the authority granted in these proceedings. The action proposed to be taken in *Tongue River III* necessitates SEA's review of associated potential environmental impacts and a subsequent decision by the Board as to whether the proposed Western Alignment satisfies the criteria of 49 U.S.C. 10901, as amended in the ICC Termination Act of 1995 (ICCTA).<sup>2</sup>

<sup>1</sup> Petitions for review of *Tongue River II* are pending in the Ninth Circuit. Those cases are being held in abeyance until this case is decided.

<sup>2</sup> Pub. L. 104-88 109 stat. 803 (1995). In ICCTA, Congress abolished the ICC and transferred its rail regulatory functions and proceedings to the Board. Section 10901(c), as amended by ICCTA, now

### Environmental Review Process and Course of Proceedings in Tongue River III

After the application in *Tongue River III* was filed, SEA and three cooperating agencies<sup>3</sup> began the environmental review process. On July 10, 1998, SEA issued a Notice of Intent (NOI) to prepare a SEIS to consider the potential environmental impacts of the proposed Western Alignment routing. The NOI also sought comments from the public on the scope of the SEIS. SEA received 34 comments from Federal, state, and local agencies, as well as TRRC, individual property owners, and community representatives. SEA published its final scope of the SEIS on February 3, 1999. That notice specified that the SEIS would evaluate the Western Alignment in full, as well as refinements to the alignments previously considered in *Tongue River I* and *Tongue River II*, where there have been significantly changed circumstances indicating that what was done before is no longer adequate.

On March 2, 2000, before SEA completed its Draft SEIS, TRRC requested that SEA suspend its environmental work. Almost three years later, on December 19, 2002, TRRC advised SEA that it was now in a position to move forward and asked SEA to resume its environmental review of *Tongue River III*. Shortly thereafter, on January 17, 2003, TRRC filed a request with the Board seeking to update its previously submitted evidence on the transportation aspects of the *Tongue River III* application. On March 11, 2003, the Board authorized TRRC to file the updated evidence. In its supplemental evidence filed on May 1, 2003, TRRC updated the record in the following five areas: (1) Transfer of the Otter Creek Tracts 1, 2, and 3 to the State of Montana; (2) tonnage forecasts, financial forecasts, and estimated construction costs; (3) TRRC's business structure, proposed financial structure, and plan for raising the funds required for construction; (4) supporting statements from Montana officials; and (5) the effects of the Board's recent approval of the Dakota, Minnesota, and Eastern Railroad's proposed

provides that the Board shall authorize the construction and operation of a proposed new rail line "unless the Board finds that such activities are inconsistent with the public convenience and necessity." Thus, there is now a presumption that a rail construction proposal will be approved.

<sup>3</sup> As discussed in more detail below, the cooperating agencies are the U.S. Army Corps of Engineers (Corps); the U.S. Department of the Interior, Bureau of Land Management (BLM); and the Montana Department of Natural Resources (MT DNRC). Future references to "SEA" encompass the efforts of the cooperating agencies.

construction of a new rail line to serve the southern Powder River Basin in Wyoming. See *Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin*, STB Finance Docket No. 33407 (STB served Jan. 30, 2002), *appeal filed, Mid States Coalition for Progress, et al., v. Surface Transportation Board*, No. 02-1359 *et al.* (8th Cir. Filed Feb 7, 2002). In addition, TRRC provided insight into its relationship with The Burlington Northern and Santa Fe Railway Company, with which the proposed line connects. The Draft SEIS will reflect the updated information that TRRC has submitted. The Board served a decision on July 7, 2003, establishing a procedural schedule for replies.

With respect to the environmental review process, on March 26, 2003, SEA served an amended NOI that announced that the environmental review of the *Tongue River III* application would now go forward. The amended NOI solicited comments from the public on the scope of the SEIS and asked whether the public had any new information to include in the SEIS. SEA received eight comments from Federal, state, and local agencies, individual property owners, and community representatives. A brief summary of the main points raised in the comment letters is provided below.

The Environmental Protection Agency (EPA), Region 8, commented on a variety of issues including the identification and discussion of water bodies with impaired uses; cumulative effects including coal bed methane development; potential air quality impacts on the Class I Northern Cheyenne Indian Reservation; required consultation with tribal governments and the need to assess all impacts on tribal trust lands; wetlands and riparian areas; and address pollution prevention, preferably at the source. Finally, EPA stated that the SEIS should include an effective strategy for public involvement of minority and low-income populations.

The Montana Natural Heritage Program (MNHP) commented that all state plant and animal species of concern should be discussed in the SEIS, in particular the bald eagle, snapping turtle, spiny softshell, woolly twinpod, Barr's milkvetch and nuttall desert-parsley. The MNHP also recommended that SEA contact the U.S. Fish and Wildlife Service for a current listing of threatened and endangered plant and animal species.

The Northern Plains Resource Council (NPRC) commented on the need for a discussion of cumulative effects, including coal bed methane well development. NPRC also indicated that

there is a need to assess potentially impaired water bodies, including the total maximum daily load (TMDL) designations currently being developed and assigned for the Tongue River area by the State of Montana. NPRC asked that the SEIS discuss any new species of concern that have been identified since 1999, and indicated that the Board should consider if there is any public convenience and necessity that justifies construction and operation of the project. Finally, NPRC suggested that a new NEPA document should be prepared that covers the entire 130-mile line between Miles City and Decker.

The Montana Environmental Information Center noted that wildlife inventories that were not performed for *Tongue River II* should be completed at this time. In addition, it requested that the SEIS assess the entire line for potential impacts to increased elk populations; discuss coal bed methane development and its ability to alter the character of the physical environment; and address when and if construction will actually occur. Furthermore, it indicated that SEA should conduct its own analysis of the economic merits of the proposal and that *Tongue River III* should not be examined as a supplement to the previous EISs, but that the entire 130-mile route from Miles City to Decker should be reexamined.

Terry Punt and Jeanie Alderson of the Bones Brothers Ranch commented that the purpose and need for the railroad line needs to be reassessed in light of the following factors: *Tongue River I* was proposed to serve the Montco mine, but this mine lost its permit in the 1990s; the recently-approved Dakota, Minnesota & Eastern (DM&E) rail line is meeting the current transportation need of the region and recent layoffs indicate a slower coal market; and Otter Creek coal is high in sodium and is not profitable. These commenters also echoed the need for coal bed methane well development to be taken into account.

Mark Fix commented that the impacts from the coal bed methane project are overwhelming and, with the proposed Tongue River railroad, would result in unacceptable environmental conditions. Mr. Fix also suggests that there is a need for a new NEPA document that covers the entire Tongue River railroad route as one project.

Beth Kaeding commented that the impacts of connected actions, including the coal bed methane development in Wyoming and Montana, new power plants in Wyoming, expanded coal mining in Wyoming, and proposed power plants in Montana need to be

considered cumulatively. Ms. Kaeding also commented that inventories for wildlife, fish, and plant species should be prepared from field studies. Ms. Kaeding expressed concerns about a variety of issues, including the amount of earth that would need to be moved for this project and the potential impacts from erosion and sedimentation; the amount of water required for the proposed construction and potential impacts to streams and the water table; and the amount of earth that will be exposed to the introduction of noxious weeds. Additional concerns include fire hazards from rail operations, death of livestock on the rail lines, noise, economic viability of the applicant, impacts to residents and land use in the event of a future abandonment, and impacts on the character of the region.

The State of Arkansas, Technical Review Committee, submitted form letters indicating that it does not have any comments on the proposed final scope of work for the SEIS.

SEA has prepared this amended final scope for the SEIS based on a careful review of all the comments to the amended NOI, consultations with appropriate Federal and state agencies, and review of the environmental documents and studies previously prepared in *Tongue River I* and *Tongue River II*. With one exception, the final scope has been amended, where necessary, to encompass all of the points raised in the comment letters. Regarding the request expressed by several commenters that a new NEPA document should be prepared which addresses the entire 130-mile line from Miles City to Decker, the Board does not believe it is necessary or appropriate to reopen and reconsider in their entirety the authority granted in *Tongue River I* and *Tongue River II*, both of which have long since become administratively final. Rather in the SEIS, SEA will evaluate the Western Alignment in full, as well as refinements to the alignments previously considered in *Tongue River I* and *Tongue River II*, where there have been significantly changed circumstances indicating that what was done before is no longer adequate.

The amended scope of this SEIS has been developed in consultation with the three cooperating agencies discussed above. The cooperating agencies have decision-making authority over *Tongue River III*, independent of the Board, and are the three principal agencies from whom TRRC must obtain separate approvals. To help these agencies fulfill their regulatory responsibilities and functions, and to avoid duplicative environmental analysis, SEA will

include in the SEIS environmental review of certain issues specifically requested by the cooperating agencies.

After completing their independent environmental analysis of the Western Alignment and those portions of *Tongue River I* and *Tongue River II* that need to be updated, SEA and the cooperating agencies will serve a Draft SEIS on all the names on the Board's service list for this proceeding and on appropriate Federal, state, and local agencies, and will publish notice of this document in the **Federal Register**. The public will be invited to review and comment on all aspects of the Draft SEIS. SEA and the cooperating agencies will then carefully consider all the timely comments received on the Draft SEIS, conduct any further environmental review that may be necessary, and will then prepare and issue a Final SEIS. A notice of the Final SEIS will also be published in the **Federal Register**. The Board will then take into account the Draft SEIS, the Final SEIS, and all comments received in issuing its final written decision in *Tongue River III*.

#### Final Amended Scope for the SEIS

The amended scope of the SEIS for the construction and operation of the Western Alignment will involve a detailed environmental analysis of the proposed new routing. The SEIS will discuss alternatives to the proposed new routing and will compare the potential effects of the Western Alignment to the Four Mile Creek Alternative approved in *Tongue River II*. SEA's analysis will include discussion of the following topics: biological and aquatic resources, land use, cultural resources, water quality, socioeconomics, environmental justice, transportation and safety, soils and geology, air quality, aesthetics, noise and vibration effects, recreation, and cumulative effects. Impacts on Native Americans, including sites of importance to them, will also be addressed.

The Draft SEIS will also incorporate the supplemental evidence submitted by TRRC on May 1, 2003, where it relates to the project description, the project's purpose and need, and/or the potential environmental impacts of the construction and operation of the proposed rail line.

#### Format of the SEIS

The Draft SEIS will be organized into three separate sections. The first section will evaluate the potential impacts associated with the proposed Western Alignment in *Tongue River III*. The second section will provide the updated analysis relating to *Tongue River I* and *Tongue River II*, as discussed above. A

third section will discuss cumulative effects associated with the construction and operation of the entire line from Miles City to Decker, Montana from both the Four Mile Creek Alternative and the Western Alignment. At their request, and to assist the cooperating agencies in their permitting processes, SEA will provide appendices that address further environmental issues needed by the individual cooperating agencies.

#### Assumptions

- To avoid duplication, the SEIS will refer to, utilize, and incorporate by reference the environmental analyses prepared for *Tongue River I* and *Tongue River II*, as appropriate.
- The SEIS will evaluate the impacts of the proposed Western Alignment in *Tongue River III*, and will compare those impacts to the impacts related to the Four Mile Creek Alternative approved in *Tongue River II*; the Four Mile Creek Alternative is the No-Build Alternative in *Tongue River III* because it has already been approved.

#### Section I

##### *Tongue River III*

##### *Potential Environmental Impacts Associated With the Construction and Operation of the Western Alignment*

#### 1. Transportation and Safety

The SEIS will:

A. Evaluate the safety aspects of proposed crossings of the County Road at Four Mile Creek (proposed as a grade separated crossing), and where the Western Alignment would connect with the approved *Tongue River II* route at the north end (proposed as an at-grade crossing).

B. Assess the potential for hazardous materials transport through the corridor, and the potential for the movement of more trains and coal than was envisioned in the July 17, 1992 Draft or Final EIS for *Tongue River II*.

C. Assess the potential for train derailments and grade crossing accidents.

D. Assess the safety, operational, and maintenance advantages submitted by TRRC regarding the Western Alignment as compared to the Four Mile Creek Alternative, including TRRC's improved overall grade, shorter travel distance, reduced long-term operating and maintenance costs, and reduced need for helper engines.

E. Assess the opportunities for access by local property owners.

F. Evaluate concerns regarding fire prevention and suppression.

G. Discuss the terms of the Memorandum of Agreement between

the Montana Department of Transportation and TRRC that relate to potential environmental impacts and the implementation of mitigation measures.

H. Develop any appropriate mitigation.

## 2. Land Use

The SEIS will:

A. Evaluate impacts to property owners along the Western Alignment in terms of property acquisition, agricultural productivity, and recreational activities.

B. Evaluate the impact to parcels with a future potential for mechanical irrigation.

C. Evaluate indirect or secondary impacts to land uses such as homes located upstream from creek and river crossings.

D. Evaluate the impact of sidings as well as the rail line itself.

E. Develop appropriate mitigation to address issues such as fencing, weed protection, cattle passes, and compensation for livestock killed by trains.

## 3. Biological and Aquatic Resources

The SEIS will:

A. Establish a baseline for diversity of species for the Tongue River Region. The SEIS will map existing habitats using aerial photography and will describe the existing resources in the Tongue River Valley, including vegetative communities, wildlife and wildlife movement (especially pronghorn, elk, and deer migration, and also the impact to the movement of smaller species such as turtles and other amphibians), fisheries, and Federally threatened or endangered species. Wildlife inventories will be verified through field surveys when and if acquisition of the project right-of-way is completed.

B. Include a Biological Assessment of species, updating information from *Tongue River II* as appropriate. Specifically, the assessment will investigate species identified by the U.S. Fish and Wildlife Service in the species list recently provided for this project.

C. Include a delineation of all prairie dog colonies to assist in determining the presence of the Black-Footed Ferret.

D. Include a survey of sensitive plant species, including the woolly twinpod, Barr's milkvetch, and nuttall desert-parsley.

E. Include wetland analysis for all wetlands, riparian areas, and waters of the U.S., including creek and river crossings.

F. Develop appropriate mitigation to address potential impacts to livestock

and to wildlife migration along the project corridor.

G. Develop appropriate mitigation to ensure adequate protection from the introduction and spread of noxious weeds.

H. Develop an appropriate mitigation plan for all wetlands and waters of the United States.

I. Develop appropriate mitigation plans for erosion control, riverbank stabilization, and the reclamation and replanting of cut/fill slopes.

## 4. Soils and Geology

The SEIS will:

A. Evaluate the potential for soil erosion during construction and long-term operation.

B. Evaluate soil composition and the need for blasting.

C. Evaluate the effect of blasting on the Tongue River Reservoir dam, and require a mitigation blasting plan if such activity is found to be necessary.

D. Evaluate the effect of topography changes on runoff and flooding.

E. Evaluate proposed engineering of bridges and culverts.

F. Develop any appropriate mitigation.

## 5. Water Quality

The SEIS will:

A. Include a hydrological analysis of the *Tongue River* and the potential impact of the construction and operation of *Tongue River III* upon it.

B. Evaluate the specific potential of erosion from cut/fill slopes to degrade the current water quality of the *Tongue River* and tributary streams, specifically as it relates to Total Maximum Daily Loads (TMDLs) established for these water bodies.

C. Develop any appropriate mitigation.

## 6. Cultural Resources

The SEIS will:

A. Evaluate potential impacts to cultural and paleontological resources.

B. Include the final terms of the Programmatic Agreement between the Montana State Historic Preservation Office, the Advisory Council on Historic Preservation, BLM, MT DNRC, the Corps, the Board, and TRRC. The Programmatic Agreement will provide a means for identifying and addressing impacts on cultural resources, including Native American resources.

C. Discuss the results of consultation with Native American tribal governments, specifically the Northern Cheyenne and the Crow, taking into consideration the following regulatory provisions and directives: The National Historic Preservation Act (as amended

in 1992); The American Indian Religious Freedom Act (as amended in 1993); The Religious Freedom Restoration Act (enacted in 1993); The Sacred Sites Executive Order (released in 1996).

D. Provide the results of consultation with representatives from the Northern Cheyenne and Crow tribes to solicit information about known properties, burials, or traditional use areas on or adjacent to *Tongue River III*.

E. Discuss the eligibility of the Spring Creek Archeological District for the National Register of Historic Places, and potential impacts to this resource resulting from construction and operation of *Tongue River III*.

## 7. Energy

The SEIS will evaluate potential impacts to energy resources, and develop any appropriate mitigation.

## 8. Air Quality

The SEIS will:

A. Evaluate construction-period dust emissions from project construction.

B. Evaluate the effect of dust emissions from the long-term operation of the railroad on local recreation areas, farms, and homes.

C. Evaluate particulate emission from locomotive operation, and potential air quality impacts on the Class I Northern Cheyenne Indian Reservation.

D. Develop any appropriate mitigation.

## 9. Noise and Vibration Effects

The SEIS will:

A. Evaluate the project's effect on local property owners, residences, and ranch operations.

B. Evaluate the project's effect on local recreational activities.

C. Evaluate the project's effect on livestock and wildlife.

D. If blasting is necessary for construction, evaluate the effect of such blasting and vibration for the project on the Tongue River Reservoir dam.

E. Develop any appropriate mitigation.

## 10. Socioeconomics

The SEIS will:

A. Using Census 2000 data, evaluate potential impacts of *Tongue River III* on local social and economic patterns derived from physical changes. More detailed analysis of socioeconomics can be addressed by the cooperating agencies in their own review process. This could include, as appropriate, potential impacts of the project on local population changes in terms of short-term and long-term employment; impacts of new students generated as a

result of construction workers moving into the region; increase in Taxable Value for each of the alternatives; any additional analysis conducted by BLM.

B. Develop any appropriate mitigation.

#### 11. Recreation

The SEIS will evaluate impacts to the Tongue River State Recreation Area, and develop any appropriate mitigation.

#### 12. Aesthetics

The SEIS will:

A. Evaluate the visibility of the project from the Tongue River State Recreation Area.

B. Evaluate the visibility of the project from county roads in the area.

C. Evaluate the visibility of the project and resulting impacts to aesthetics to local residents, Native Americans, hunters, recreational users, sightseers, etc.

D. Develop any appropriate mitigation.

#### 13. Environmental Justice

The SEIS will include analysis as required of potential environmental justice effects from construction and operation of the Western Alignment, particularly focused on impacts to Native Americans, including the Northern Cheyenne, and develop any appropriate mitigation. Pursuant to guidance provided by the Council on Environmental Quality, the preparation of the SEIS will include public outreach to ensure appropriate coordination with affected low-income and minority populations. The public outreach will ensure that affected communities have adequate opportunities for public participation and comment on the Draft SEIS.

### Section II

#### *Tongue River I and Tongue River II Tongue River I*

*Tongue River I* is TRRC's original application for construction and operation of 89 miles of railroad between Miles City, Montana, and two termini in Ashland, Montana, which was approved by the Board's predecessor agency in 1986.

The SEIS will:

A. Include a wetland analysis for all wetlands and waters of the U.S. including creek and river crossings because there was no requirement that one be done when the EIS in *Tongue River I* was prepared.

B. Update Biological Assessment information based on consultation with the U.S. Fish and Wildlife Service.

C. In consultation with the Montana State Historic Preservation Office, the

Advisory Council on Historic Preservation, BLM, MT DNRC, the Corps, and TRRC, finalize and implement an appropriate Programmatic Agreement which will apply to the entire line from Miles City to Decker, Montana.

D. As requested by MT DNRC, the Northern Cheyenne, and the Northern Plains Resource Council, provide a limited additional analysis of water quality to include a discussion of the designation of Otter Creek, and the upper and lower Tongue River as impaired water bodies by the state of Montana.

E. Evaluate effects on BLM property in the areas of wildlife habitat; vegetation; riparian/wetlands; livestock grazing; soil, water, and air; cultural resources; recreation; socioeconomic; access; wilderness; and, environmental justice.

F. Include an analysis of potential impacts to the sturgeon chub, and the sicklefin chub, and include mitigation to avoid construction during spawning/incubation periods.

G. Include additional analysis related to the proposed changes in the alignment that may result in potential impacts to the Miles City Fish Hatchery. The analysis will also consider changes to the hatchery, specifically the increase in the number of hatchery ponds and the initiation of a new recovery program for the pallid sturgeon.

#### *Tongue River II*

TRRC sought in *Tongue River II* to extend the rail line approved in *Tongue River I* another 41 miles from Ashland to Decker, Montana. In 1996, the Board approved *Tongue River II* via the Four Mile Creek Alternative.

The SEIS will:

A. Based on consultation with the Corps, update the existing wetland delineation and functional analysis information for all creek and river crossings to the extent necessary in connection with the Corps' permitting process.

B. Based on consultation with the U.S. Fish and Wildlife Service, update biological assessment information to the extent deemed necessary.

C. In consultation with the Montana State Historic Preservation Office, the Advisory Council on Historic Preservation, BLM, MT DNRC, the Corps, and TRRC finalize an appropriate Programmatic Agreement, which will apply to the entire line from Miles City to Decker, Montana.

D. As requested by the MT DNRC, the Northern Cheyenne, and the Northern Plains Resource Council, provide a limited analysis of water quality to

include a discussion of the designation of Hanging Woman Creek, and the upper and lower Tongue River as impaired water bodies by the state of Montana.

E. Include additional analysis, as required, of potential environmental justice effects from construction and operation of *Tongue River II* on *Tongue River III* and the Four Mile Creek Alternative, particularly focused on impacts to Native Americans, including the Northern Cheyenne.

### Section III

#### *Cumulative Effects*

Cumulative effects of the construction and operation of the entire line from Miles City to Decker, MT will be discussed in the SEIS. This cumulative impacts discussion will update the previous information contained in *Tongue River I* and *Tongue River II* to include Custer Forest timber sales projections, as well as a discussion of reasonably foreseeable developments, including BLM's recently approved management plan relating to the development of coal bed methane wells, as well as expanded coal mine development in Wyoming, new power plants construction in Wyoming and Montana, and the recently approved Dakota, Minnesota and Eastern rail line. In addition, more general information will be provided regarding future coal mine development in the Ashland, MT area and the air quality effects of the use of low sulfur coal in power production. Impacts to Native Americans will also be addressed.

By the Board, Victoria Rutson, Chief,  
Section of Environmental Analysis.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03-21550 Filed 8-21-03; 8:45 am]

**BILLING CODE 4915-00-P**

### DEPARTMENT OF TRANSPORTATION

#### Surface Transportation Board

[STB Finance Docket No. 34388]

#### Union Pacific Railroad Company— Trackage Rights Exemption—Omaha Public Power District

Pursuant to a trackage rights agreement dated July 25, 2003,<sup>1</sup> between Union Pacific Railroad Company (UP)

<sup>1</sup> A redacted version of the trackage rights agreement between UP and OPPD was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. A protective order was served on August 14, 2003.