

September 22, 2015

Ken Blodgett
Attention: Environmental filing, Docket No. 30186
Surface Transportation Board
395 E. Street SW
Washington, DC 20423-0001

Tongue River Railroad draft Environmental Impact Statement

Dear Mr. Blodgett:

Thank you for the opportunity to comment on the draft Environmental Impact Statement (DEIS) for the Tongue River Railroad. Otter Creek Coal, LLC (“OCC”) supports the Tongue River Railroad Company’s preferred alternative, the Colstrip Alternative, and provides the following comments. The DEIS will no doubt benefit from public comment, improvement OCC is confident will be reflected in the Final EIS.¹

Purpose and Need/Alternatives Analysis

OCC notes the importance of the proposal in developing one of the “largest remaining undeveloped reserves of low sulfur, sub-bituminous coal in the United States.” EIS Summary, p. S-1. Development of this valuable coal reserve, and construction of associated railroad access, is consistent with public convenience and necessity.

¹ OCC respectfully requests that, consistent with CEQ policy, the project proponent be given the opportunity to respond to comments received in this process, and requests that the document be added to the administrative record.

The Surface Transportation Board (STB), like all federal agencies, is not required to analyze alternatives that are remote, speculative, impractical, or ineffective at achieving the stated goals. The DEIS achieves a comprehensive balance in evaluating ten build alternatives in addition to the No Action alternative. The alternatives reflect, in part, the input on the DEIS received by STB from broad public involvement in ten public meetings held in Montana, plus two online public meetings. The DEIS appropriately recognizes the negligible impact on direct Greenhouse Gas emissions, recommends mitigation measures during construction, and acknowledges the lack of jurisdiction or authority over proposed coal mines and power plants.

Air Quality

The DEIS reflects the proposal's compliance with National Ambient Air Quality Standards and Montana Ambient Air Quality Standards, including compliance with standards for coal dust. As noted in the DEIS, for all adverse impacts that are greater than negligible, mitigation measures are available, and they will be implemented.

The OCC mine will be required to have a final air quality permit issued by the Montana Department of Environmental Quality (MDEQ) and operate in compliance with that permit. Therefore, estimates attributed to the OCC mine should be based on the requirements of the MDEQ permit, a draft of which is available online at <http://www.deq.mt.gov/AirQuality/ARMpermits/AirQuality.mcp>. OCC believes that MDEQ's estimates are correct, and suggests that STB coordinate further with MDEQ to ensure consistency between the EIS and the actual permit that will be issued by the state authority.

For example, the DEIS vastly overstates fugitive emissions attributable to construction. Table 18-3, which lists general construction fugitive emissions during the 29-month construction duration, does not recognize the MDEQ draft permit levels for the OCC Mine. As a permitted and operating facility, even running at a production level of 35 million tpy, the PM₁₀ potential emissions from the OCC mine would be, at their highest, 2,245 tpy. Therefore, it is unrealistic to predict that over a 29-month construction period the OCC mine would produce a potential for 120,213 tons of PM₁₀, as shown in Table 18-3 of the DEIS.

Appendix U also appears to include an unrealistic estimation of fugitive emissions. It is unclear as to how the PM₁₀/PM_{2.5} construction emissions were calculated (emission factors) prior to being added to Chapter 18. For PM₁₀, the factor calculates to 13,224 lb PM₁₀/acre. For PM_{2.5}, this calculates to 1,984 lb PM_{2.5}/acre. It is unclear if tailpipe emissions are included in these calculations.

OCC notes that the draft Air Quality Permit for the OCC mine addresses emissions from material (topsoil) handling. A factor of 0.058 lb PM/ton of topsoil handling (AP-42 11.9 Western Surface Coal) was used, with a PM₁₀/PM ratio of 0.5 for PM₁₀ and a PM_{2.5}/PM₁₀ ratio of 0.10 for PM_{2.5}. A topsoil density of 1.5 tons/bank cubic yard and an average soil depth of 2.75 feet were used in the calculations. Using this methodology, a lb/acre emission factor was calculated, similar to what is in the DEIS. The OCC air quality application documents the disturbed acres for year 1 at 123 acres, 545,710 cubic yards, and 818,565 tons. This calculates to 23.74 tons of PM, 11.87 tons of PM₁₀, and 1.187 tons of PM_{2.5}, as shown below:

- PM ef = (23.74 tons * 2000 lbs/ton)/123 acres = 386 lbs/acre
- PM₁₀ ef = (11.87 tons * 2000 lbs/ton)/123 acres = 193 lbs/acre
- PM_{2.5} ef = (1.187 tons * 2000 lbs/ton)/123 acres = 19.3 lbs/acre

The potential emissions listed in Table 18-6² for the first three years of operation are also drastically inflated compared to the permitted values in the OCC mine's draft Air Quality Permit, and should be amended for consistency with the MDEQ permit. For example, the highest potential PM₁₀ emissions permitted for the operation of the facility at a production rate of 35 million tpy is calculated in the OCC Mine's draft Air Quality Permit as 2,237.5 tpy. Yet Table 18-6 lists, at a production rate of 34 million tpy, potential PM₁₀ emissions of 6,576 tpy. In short, the DEIS uses a potential emission methodology that is inconsistent with that used by the relevant permitting authority, and which could not be given permit coverage by MDEQ.

Cumulative Impacts

The cumulative impacts analysis in Chapter 18 includes the proposed Otter Creek Coal mine and appropriately recognizes the temporary and minimal impacts on

² We believe that the fourth column of Table 18-6 was intended to identify "PM₁₀" emissions not "PM" emissions.

grade crossing delay and safety, as well as the negligible cumulative impact of coal dust, noise and vibration.

The cumulative impacts analysis on vegetation would be more accurate if it recognized the statutory requirements for reclamation, protection of the hydrologic balance, weed control, and bonding requirements contained in the Montana Strip and Underground Mine Reclamation Act (MSUMRA). The requirements of MSUMRA include sufficient bonding requirements to cover any impacts to vegetation, including vegetation loss, constraints to plant germination and growth, noxious weeds, dust deposition, wildfires, altered hydrology and altered vegetation (all of which will not occur or will be minimal and/or temporary.) Paragraph 18.5.6.1 should be revised to clarify that any impacts to vegetation from the mining operations will be regulated under MSUMRA and therefore, will be minimal and/or temporary.

OCC refers the reviewers' attention to OCC's baseline data reports submitted to DEQ as part of the OCC mine permit application, available online at <http://deg.mt.gov/ea/ottercreek1stoundresponse.mcp>. If those resources were consulted, the DEIS contains wildlife numbers that do not correspond to the data observed during recent years and included in OCC's baseline report. The DEIS does not contain, to OCC's knowledge, data that STB itself created for NEPA purposes, so there should be consistency between the DEIS and OCC's baseline data. For example, Paragraph 18.5.6.2 of the DEIS refers to thirty-four sharp-tailed grouse leks; however, baseline data discusses four leks with activity noted during recent field visits, one unobserved lek, and two leks with no activity noted in recent years. This totals only seven leks, not thirty-four.

The cumulative impacts analyses for fish, surface water, and ground water posits a worse than worst-case scenario because it does not include the impact of the regulatory requirements for, and limitations on, water discharges and impacts to water quality, including nondegradation requirements which are necessary under Montana's water quality and coal mining laws and rules. Compliance with these regulations, and others, should be assumed; therefore, any adverse impact, including impacts to downstream water, would be minor or negligible. OCC believes it is inappropriate to evaluate cumulative impacts based on a presumption of noncompliance (e.g. the statement regarding release of contaminants in the third line from the bottom of page 18-34). Further, the

statement in paragraph 18.5.6.3 that the Tongue River would be impacted by the proposed Otter Creek Mine does not consider regulatory requirements and is therefore misleading.

Similarly, the cumulative impacts analysis for special status species would be more accurate if it recognized Montana's Sage Grouse Conservation Plan, as does the federal wildlife agencies, and acknowledged that compliance with the plan would result in negligible adverse impacts.

Conclusion

The DEIS would benefit from additional review, consideration of Montana's environmental regulations, and comparison to OCC's baseline reports and mine permit application available publicly at <http://deq.mt.gov/ea/ottercreek1stoundresponse.mcpX>. Thank you for the opportunity to provide these comments.

Sincerely,
OTTER CREEK COAL, LLC



William M. Rowlands, Director of Operations