



# Great Northern Properties Limited Partnership

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## Via Email and Overnight Delivery

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

**RE: Comments on Draft Environmental Impact Statement (EIS No. 20150109), Tongue River Railroad Construction and Operation, 80 Fed. Reg. 22992 (April 24, 2015).**

Dear Mr. Blodgett:

Great Northern Properties Limited Partnership (GNP) is filing these comments on the Tongue River Railroad Draft Environmental Impact Statement (TRR/DEIS) issued by the Surface Transportation Board's (STB) Office of Environmental Assessment (OEA).

### 1. Great Northern Properties L.P.

GNP is the largest private owner of coal resources in the United States. GNP's total ownership includes over 20 billion tons of identified, surface-mineable coal reserves. Of these holdings, approximately 730 million tons of subbituminous reserves have been leased to Arch Coal Inc., which, together with approximately 570 million tons of adjacent State of Montana coal holdings, comprise the Otter Creek reserves proposed for development by Otter Creek Coal, LLC (OCC).

Given this unique ownership situation and because the TRR would serve the proposed OCC mine, GNP is especially interested in the findings and conclusions contained within the TRR/DEIS.

### 2. Comment Overview

GNP considers the DEIS to be a largely well-prepared, rational and objective assessment of the potential environmental impacts that could result from the construction and operation of the proposed TRR. However, there are a couple of sections of the DEIS that GNP believes could be enhanced to better communicate the potential impacts of the proposed TRR project. The remainder of this letter focuses on those specific areas and suggested enhancements.

### 3. Section-specific Comments

#### Chapter 16 – Environmental Justice

##### **The DEIS explanation of the basis for characterizing the project-related Environmental Justice impacts for noise as high and adverse is confusing.**

GNP finds the Section 16.3.4 explanation for how OEA determined that project-related noise impacts would be “high and adverse” very confusing and suggests below how the explanation might be made clearer.

Section 16.3.4 reads as though the determination of high and adverse, as it pertains to noise impacts, was made before the analysis was conducted. The Section 16.3.4 title “Step 4: Determine Whether the High and Adverse Noise Impacts Would Disproportionately Affect Minority or Low Income Populations” introduces the section’s confusing explanation. It seems to suggest that the impacts were previously determined to be “high and adverse” and all that remains is to determine whether they disproportionately impact minority or low-income populations.

In fact, the noise impacts were previously determined to be adverse. (Section 7). The purpose of the Section 16 analysis is to determine whether those impacts are disproportionately high relative to the minority and low-income population. GNP respectfully suggests that the title should be revised to read: “Step 4: Determine Whether the Adverse Noise Impacts on the Minority or Low Income Populations would be Disproportionately High”.

Citing the May 2, 2012 Final DOT Environmental Justice Order, Section 8(a) requires that DOT “...determine whether programs, policies, or activities ...will have an adverse human health or environmental effect on minority and low-income populations and whether that adverse effect will be disproportionately high.”

In the context of Environmental Justice then, the term “high and adverse” refers to two separate determinations. The term “adverse” refers to the impact itself without regard to the social status of those exposed to the impact. The term “high” refers to the level of disproportionality between the percentage of those exposed to the impact who are members of the minority/low-income population and the percentage of the total population of the area that are members of the minority/low-income population.

So, for an impact to be considered “high and adverse” in the Environmental Justice context, the impact first has to be deemed adverse. In the case of project-related noise impacts, Section 7 of the DEIS reports that the noise impacts were deemed “moderate” and “adverse” (see Sec. 7.1)

Once the impacts are deemed adverse, it then has to be determined whether the proportion of those subject to the adverse impact who are also members the minority/low-income population is higher than the proportion of the total population of the area that is minority/low-income. Where that is determined, the minority/low-income population is considered to suffer a disproportionately high impact.

When both determinations are made, the impact on the minority/low income population is considered “high and adverse.”

On that basis, GNP respectfully suggests other edits to the Section 16.3.4 text would help clarify how the analysis was conducted:

- 1<sup>st</sup> bullet; First, OEA identified the population affected by ~~high and~~ adverse noise impacts. and
- 2<sup>nd</sup> bullet; Second, OEA estimated the proportion of the receptors affected by ~~high and~~ adverse noise impacts that belongs to a minority group or that is low-income.

GNP respectfully suggests that clarifying the Section 16 explanation of the process used by OEA to arrive at its “high and adverse” determination would go a long way toward clarifying how the very same impacts can be characterized as “moderate” and “adverse” in Section 7 but “high and adverse” in Section 16.

**The analysis OEA relied upon to reach its “high and adverse” impact determination is incomplete.**

OEA determined the project-related noise impacts along most of the alternative project routes and many of the downline segments “...would be high and adverse.” (Sec. 16.5.4, top of pg. 16.23). GNP suggests that the analysis OEA relied upon to make that determination is incomplete because it does not consider project-related positive impacts on other segments of the national rail system.

In other portions of the DEIS, OEA acknowledges that, in every scenario analyzed, Tongue River coal would simply displace other PRB coal in both the targeted domestic and international marketplaces. On that basis, it seems logical that if the project-affected minority and/or low income population would be subject to “high and adverse” impacts along the TRR routes considered in the DEIS analysis, then it is not inconceivable that members of the minority and low-income population would be relieved of those same impacts along routes currently transporting the PRB coal that would be displaced by Tongue River coal.

That is, similar impacts may well exist today along segments unique to the transportation of PRB coal and have a similar impact on the minority and low income population along those route segments. Because the TRR project would displace other PRB coal in the marketplace, it would serve to relieve those individuals along the unique PRB routes of those now existing adverse impacts. The DEIS does not include any report of such an analysis or specifically acknowledge the potential for such an impact reduction within the project-affected minority and low-income population in its Environmental Justice section.

OEA acknowledges the potential for project-related impact reductions in its Chapter 17 report on its analysis of Downline Impacts. Specifically, in Section 17.5.1.1 - Rail Operations and Rail Safety on page 17-14;

*“OEA anticipates that estimated accident frequency would decline on other segments in the national rail network that would not carry traffic from the proposed rail line because the total volume of rail traffic transported over the national rail network is not anticipated to change materially because of the rail line. OEA concluded that changes in rail traffic as a result of the proposed rail line would have both a minor adverse and minor positive impact on predicted rail accidents on existing lines.”*

Similar conclusions were reached in other Downline impacts analyses, including Grade-Crossing Safety.

GNP respectfully suggests that Environmental Justice impacts should be analyzed using a similar approach to that used by the OEA to assess the impacts on rail safety. In its Rail Safety analysis OEA assessed the net impact of the TRR project on the national rail system. Under the Environmental Justice heading, the DEIS analyzed impacts to minority and low-income populations only along those segments of the national rail system where there would be a project-related increase in traffic. GNP respectfully suggests that it would be more appropriate to consider the impact on the minority and low-income population along all of the project-affected segments, including those where traffic is projected to decrease as a result of the TRR project

Indeed, the Department of Transportation, in its May 2, 2012 Final DOT Environmental Justice Order (Order), calls for such an analysis in its Section 8 - Actions to Address Disproportionately High and Adverse Effects. Section 8(b) of the Order reads;

*“In making determinations regarding disproportionately high and adverse effects on minority and low income populations, mitigation and enhancements measures that will be implemented and **all offsetting benefits to the affected minority and low income populations may be taken into account**, as well as the design, comparative impacts, and the relevant number of similar existing system elements in non-minority and non-low-income areas.”* [Emphasis added]

GNP acknowledges that the Order does not appear to compel the consideration of offsetting benefits in all circumstances, but because the project-related reduction in rail traffic (trains/day) on the segments unique to the PRB coal would be virtually identical to, and contemporaneous with, the corresponding increases on the segments unique to the Tongue River coal, it compels consideration in this case. Indeed, to the extent that the PRB coal must travel a greater distance over the rails than the Tongue River coal in order to serve the same markets suggests that the project would, on balance, result in a net reduction in adverse transportation-related Environmental Justice impacts.

GNP respectfully suggests that the DEIS is incomplete where it does not include, in its Environmental Justice analysis, all project-related impacts to the project-affected minority and low-income population, including those along routes projected to realize a corresponding and contemporaneous project-related decrease in traffic, and therefore impacts.

## **Chapter 17 – Downline Impacts**

The DEIS quantifies downline Environmental Justice impacts (i.e., noise impacts) on those segments where a project-related increase in traffic is anticipated but not on those segments where a corresponding project-related decrease in traffic would result. The DEIS concludes that Tongue River coal will simply displace coal from other PRB mines (App C; Section 1.2.8 – Chapter 9 – Rail Transportation Routes; App. C, Table 4-1). So, a project-related increase in traffic on segments along the Tongue River coal train routes must logically result in a corresponding and contemporaneous project-related decrease in traffic on segments along the PRB coal train routes.

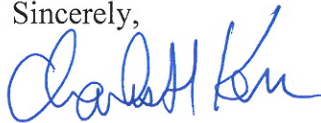
As more fully explained above, GNP respectfully suggests that the DEIS is incomplete where it does not include, in its Environmental Justice analysis, all project-related impacts to the project-affected minority and low-income population, including those along routes projected to realize a corresponding and contemporaneous project-related decrease in traffic, and therefore impacts.

### **Appendix C – Coal Production**

In Section 3.3.1.3, the DEIS presents the approach used to calculate the number of trains necessary to transport the production from the Tongue River mines. In the example cited (Otter Creek Mine) the DEIS misstates the units of measure used in the bullet 2 and 3 equations. The quotient in the bullet 2 equation should be “coal train cars per day” rather than “tons per train.” Likewise in the bullet 3 equation, the numerator should be “coal train cars per day” rather than “tons per train.” Otherwise, the calculations, including the result, appear correct.

GNP appreciates the opportunity to comment on the DEIS. As stated previously, GNP considers the DEIS to be a largely well-prepared, rational and objective assessment of the potential environmental impacts that could result from the construction and operation of the proposed TRR. We certainly appreciate your consideration of our comments. Please do not hesitate to contact me at the address, phone number or email address in the letterhead if you wish to discuss our comments further.

Sincerely,



Charles H. Kerr