

Environmental Review Process and Course of Proceedings in Tongue River III

After the application in *Tongue River III* was filed, SEA and three cooperating agencies³ 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

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

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.

³ 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.