

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 30186

**TONGUE RIVER RAILROAD COMPANY, INC.—RAIL CONSTRUCTION
AND OPERATION—IN CUSTER, POWDER RIVER AND
ROSEBUD COUNTIES, MT**

VERIFIED STATEMENT OF THOMAS SANZILLO

My name is Thomas Sanzillo and I am Finance Director for the Institute for Energy Economics and Financial Analysis (“IEEFA”). I have served in this job since May 2012 but have been involved in fossil fuel finance matters since September 2007. In this capacity I research and prepare studies, memos, and testimony (and supervise the same) and speak publicly on a range of fossil fuel issues. I have authored, co-authored, or provided related research on United States domestic coal markets and plant finances, U.S. coal producer and mine finance and financial regulation, federal coal leasing in the Powder River Basin (“PRB”), federal coal subsidies, federal/state mine reclamation, utility finance, public power financials (including municipal power systems, rural cooperatives, and state power agencies). I have testified before three Public Service Commissions (Minnesota, Wisconsin, and Colorado) and submitted affidavits in two coal related federal proceedings as well as before an administrative proceeding at the Exim Bank. My work has involved energy and coal issues in at least 25 states.

My work has also included analysis of global economic trends and coal markets. I have co-authored a number of international coal market studies related to India and

Australia (with our office in Sydney, Australia) and provided oversight, research, and direction on a global analysis of coal markets with Carbon Tracker Institute. In addition, I have published a number of reports related to U.S. coal exports.

Prior to my work with IEEFA, I served for seventeen years (1990-2007) in various senior management positions in New York City and State government finance. My last position was the First Deputy Comptroller for New York State (I served for a short period as the State Comptroller due to an early resignation). The New York State Comptroller is the sole trustee of a \$156 billion globally invested public pension fund, chief accountant and procurement officer, chief auditor for state finances, agencies, and local governments, and reviews and approves most public debt.¹

I present this Verified Statement on behalf of the Northern Plains Resource Council (“Northern Plains”). The purpose of this Verified Statement is to offer my professional opinion on the viability of the Otter Creek mine project, the only coal mine that would be served by the proposed Tongue River Railroad. My Verified Statement: 1) provides historical and up to date information on the status of coal markets in the United States and globally; 2) offers information and analysis on the current and future financial outlook of Arch Coal, Inc. (“ACI”), a 38.29% owner of the Tongue River Railroad Company (“TRRC”), and 3) provides an overall opinion on the viability of the Otter Creek project that would be served by the Tongue River Railroad.

To prepare this testimony I have reviewed TRRC’s December 17, 2012 Supplemental Application for Construction and Operation Authority, Northern Plains’

¹ Thomas Sanzillo, *The New York State Comptroller’s Office*, *The Oxford Handbook of New York State Government and Politics* 287, 292 (2012).

April 2, 2013 Comments on TRRC’s application, TRRC’s June 7, 2013 Reply, Northern Plains’ July 2, 2013 Sur-reply, and TRRC’s August 9, 2013 Reply as well the affidavits and material provided as part of those submissions. I have also reviewed all of the highly confidential documents² produced in discovery by the TRRC and its owners including various internal documents of both ACI and BNSF Railway Company (“BNSF”). I have also reviewed discovery deposition transcripts from this proceeding.

My testimony also draws upon many of the same external sources used by the parties in this proceeding, most notably the reports and statistical projections of domestic and international coal markets provided by the United States Energy Information Administration (“EIA”). I supplement this largely quantitative data from the EIA with additional quantitative and qualitative analysis provided by several large banks with long histories with the coal industry. I further rely on detailed analysis of global coal markets conducted by Carbon Tracker Institute (“CTI”) in September 2014.³ CTI and my organization, IEEFA, collaborated on significant portions of the report, and many of the modeling assumptions regarding national and global coal markets were derived from IEEFA’s modeling. Where necessary and appropriate I rely upon market price information provided by coal companies and independent market pricing data, analytical, and industry reporting sources.

² Confidential documents are identified in the body of this affidavit along with appropriate Bates numbers and other identifiers. Further clarifying information is provided in accompanying footnotes where appropriate.

³ *See generally* Carbon Tracker Initiative, <http://www.carbontracker.org/report/carbon-supply-cost-curves-evaluating-financial-risk-to-coal-capital-expenditures/> (last updated Mar. 24, 2015).

SUMMARY OF CONCLUSIONS

- **There is no need or market demand for Otter Creek coal for the foreseeable future.** Based upon what we can see today and for the foreseeable future there is insufficient demand from the domestic and international thermal coal markets to warrant any finding of a viable market for this new coal mine and the underlying rail infrastructure to support it.
- **Coal production in the PRB is shrinking due to structural, long-term changes in the domestic and international markets.** From 2005 through 2011 the region produced on average 462 million tons per year (“mtpa”). From 2012 through 2014 the region produced on average 415 mtpa, a 47 mtpa decline or just over 10%.
- **Looking forward through 2016 coal production is expected to continue declining nationally and in the PRB.** From 2011 through 2016 the Western Region, the region dominated by the PRB, is expected to shrink by 73 mtpa.
- **The EIA has downgraded its long-term forecasts.** In 2011 the EIA estimated that by 2030 the PRB would produce 699 mtpa. By 2014 the EIA downgraded its 2030 forecast to 493 mtpa, a 206 mtpa decline in expected PRB production.
- **There is no room in the current or projected market for Otter Creek coal.** In recent years Montana coal production has been consistent with the historical average of the last ten years, approximately 42 mtpa. The EIA is projecting some long-term growth but there are two other companies in Montana positioned to meet this demand. In addition, there are four other coal producers in the PRB looking to export coal off the west coast. With six competitors vying for a minimal amount of new coal production there is just no room for another, poorly positioned entrant into the market. In addition, EIA’s projections for coal exports to Asia identify a maximum long-term market in the 21 mtpa range. Current Montana coal producers have exported 12 mtpa in a good year.
- **Plans to export the coal from Otter Creek will not materialize.** The EIA has recently substantially downgraded its estimate of short-term export potential. ACI has done the same. According to four major investment advisors (J.P Morgan, Goldman Sachs, Citibank, and Bernstein Research), the current unfavorable market for exported coal from the United States is either never going to rise or will not do so for the foreseeable future. Investors and coal companies have scaled back or completely pulled out of the export market and related infrastructure projects. For example, ACI anticipates paying \$50 million in liquidated damages in 2015 for unused export terminal capacity due to weak seaborne coal markets.
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has produced approximately 100 mtpa.⁶ The mine has a permitted capacity⁷ [REDACTED].⁸ The EIA's declining production forecasts, which now extend to estimates for U.S. coal exports, are part of a negative outlook for the industry shared by the world's leading investment banks and coal consultants. In addition, the largest coal producers in the PRB, including ACI, have posted multiple years of dismal financial performance, including sizeable yearend losses in the hundreds of millions.

In the five-year period prior to TRRC's application, TRRC and its principal coal consultants, the EIA, and most analysts estimated significant growth in PRB production based on then-recent history in the domestic and international thermal coal market. The markets, however, changed during those years and subsequent to the submission of TRRC's application. None of these past robust assumptions about U.S. coal producers capturing significant amounts of future growth have materialized.

A. The PRB is producing less coal than it has in the recent past.

According to the EIA, in 2009 the PRB produced 455 mtpa of coal. By 2013, the amount declined to 407 mtpa. According to SNL Energy⁹ data released on 2014 coal

⁶ U.S. Sec. & Exch. Comm'n, *ACI 2015 Form 10K*, SEC.gov 1, 14 (Feb. 27, 2015), <http://sec.gov/Archives/edgar/data/1037676/000104746915001419/a2223254z10-k.htm> [hereinafter *ACI 2015 10K*].

⁷ *Id.* at 15.

⁸ [REDACTED]

⁹ SNL Energy is an online trade news service and database on energy issues, including coal. At the time I prepared this Verified Statement, the EIA has not published formal 2014 production numbers. SNL, a trade publication, reports an unofficial count much sooner as part of its broader

production, the PRB showed some increase.¹⁰ From 2005 through 2011, the region produced on average 462 million tons per year (see Table I). During the current period, 2012 through 2014, the region produced on average 415 mtpa, a 47 mtpa decline or just over 10%. The historical trajectory is clear; the region is producing less coal.

Some in the coal industry see this decline as a short-term blip against an otherwise long-term tide of rising coal production. As described below, a consensus of large investment banks, financial analysts, and other coal industry leaders see this decline as either a long-term trend or a permanent secular decline.

Table I: EIA Accounting of Powder River Basin Coal Production (000/tons of coal)

Year	Powder River Basin	Wyoming ¹¹	Montana	Wyoming + Montana ¹²
2014	418,156	N/A	N/A	N/A
2013 ¹³	407,567	387,924	42,231	430,155
2012	419,066	401,442	36,694	438,136
2011 ¹⁴	462,600	438,673	42,008	480,681

reporting functions. SNL works closely with the EIA on coal reporting. For example, SNL operates the EIA's spot coal website, http://www.eia.gov/coal/news_markets/.

¹⁰ Darren Epps and Hira Fawad, *Top Producing Powder River Basin Coal Mines in Q4'14*, SNL Financial (Jan. 30, 2015).

¹¹U.S. Energy Info. Admin., *Coal Data Browser*, EIA.gov, <http://www.eia.gov/beta/coal/data/browser/#/topic/33?agg=1,0&geo=vvvvvvvvvvvvo&freq=A&start=2008&end=2013&ctype=linechart<ype=pin&rtype=s&pin=&rse=0&maptype=0> (last visited Mar. 25, 2015).

¹² The reason for the difference between PRB numbers and aggregate Wyoming and Montana numbers is that some of the mines in each state are not technically within the designated borders of the PRB.

¹³ U.S. Energy Info. Admin., *Table 1. Coal Production and Number of Mines by State and Mine Type, 2013 and 2012*, EIA.gov, <http://www.eia.gov/coal/annual/pdf/table1.pdf> (last visited Mar. 25, 2015) (there is no 2013 Annual Coal Report available).

¹⁴ U.S. Energy Info. Admin., *Annual Coal Report 2011*, EIA.gov 1, 3 (Nov. 2012), <http://www.eia.gov/coal/annual/archive/05842011.pdf>.

2010	468,428		442,522	44,732	487,254
2009¹⁵	455,503		431,107	39,486	470,593
2008	479,000		467,644	44,786	512,430
2007¹⁶	496,000		453,568	43,390	496,958
2006	449,000		446,742	41,822	488,564
2005¹⁷	430,000		404,318	40,353	444,671

The most recent 2015 EIA, Annual Short Term Energy Outlook (“STEO”) projects a 104 mtpa loss of coal consumption for electricity in the U.S. from 2011 through 2016.¹⁸

During this same period, the U.S. is expected to lose 144 mtpa on the production side.

The Western Region, the region dominated by PRB production, is expected to see a 73 mtpa decline during this same period.¹⁹ Similarly, the outlook shows a slight decline in the delivered price of coal nationwide through 2016.²⁰

TRRC’s consultant, Seth Schwartz, President of Energy Ventures Associates (“EVA”), offers the view of a rising coal market in his Verified Statement²¹ and Rebuttal

¹⁵ U.S. Energy Info. Admin., *Annual Coal Report 2010*, EIA.gov 1, 12-13 (2010), <http://www.eia.gov/coal/annual/archive/05842010.pdf>.

¹⁶ U.S. Energy Info. Admin., *Coal Production by Region and Type, Reference Case*, EIA.gov, <http://www.eia.gov/oiaf/aeo/tablebrowser/#release=AEO2010&subject=7-AEO2010&table=95-AEO2010®ion=0-0&cases=aeo2010r-d111809a> (last visited Mar. 25, 2015).

¹⁷ U.S. Energy Info. Admin., *Table 92. Domestic Refinery Distillation Base Capacity, Expansion, and Utilization*, EIA.gov, http://www.eia.doe.gov/oiaf/archive/aeo07/supplement/pdf/sup_ogc.pdf (last visited Mar. 25, 2015).

¹⁸ *2015 STEO*, *supra* note 5.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Verified Statement of Seth Schwartz in Support of Tongue River Railroad Company’s Reply to NPRC Comments to Supplemental Application at 2, *Tongue River R.R. Co.—Rail Construction and Operation—In Custer, Powder River and Rosebud Counties, Mont.*, No. 30186 (S.T.B. June 7, 2013) [hereinafter Schwartz Comments].

Verified Statement.²² The data shows otherwise. In Mr. Schwartz's August 2013 statement he points to the long-term rise of coal production out of the PRB starting in 1986. Mr. Schwartz shows a historical annual increase from 1986 until 2011 of 4.8%.²³

Mr. Schwartz states the EIA is now showing forward annual growth rates at 0.8%.²⁴ He acknowledges that this growth rate is smaller than historic numbers²⁵ but he counters that the actual amount of coal production should increase according to the 2013 EIA Annual Coal Outlook. So, with growth from 460 mtpa in 2011²⁶ to 540 mtpa by 2030, he concludes the PRB is clearly growing.²⁷ Mr. Schwartz's points are partial accounts of the EIA data and a mischaracterization of the facts as they existed at the time of his statements to this Board.

There was ample evidence on the public record at the time that required a more qualified statement than the one offered. Mr. Schwartz offered his initial testimony in June 2013 and a rebuttal in August 2013. The production baseline Mr. Schwartz establishes for the PRB are taken from the 2009 through 2011 period; approximately 460 mtpa (see Table I above).²⁸ Mr. Schwartz essentially disregarded the precipitous drop in PRB coal production in 2012 by arguing it was the result of the twin anomalies of mild weather and a temporary decline in natural gas prices. In June he claimed the "short-term

²² Rebuttal Verified Statement of Seth Schwartz in support of Tongue River Railroad Company's Reply to NPRC Comments to Supplemental Application at 2, *Tongue River R.R. Co.—Rail Construction and Operation—In Custer, Powder River and Rosebud Counties, Mont.*, No. 30186, (S.T.B. Aug. 9, 2013) [hereinafter Schwartz Rebuttal Comments].

²³ *Id.* at 7.

²⁴ *Id.* at 6.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Schwartz Comments, *supra* note 21, at 4.

drop in domestic level coal demand is expected to turnaround in 2013.”²⁹ If he believed this in June by August it was clear 2013 would be a lot like 2012. By August 2013, SNL was projecting flat or decreased coal demand for 2013.³⁰ By December 2013 PRB coal production fell from an already low level of 419 mtpa in 2012 to 407 mtpa for 2013. (See Table I)

Mr. Schwartz’s analysis is also at odds in important ways with his own firm, Energy Ventures Analysis, Inc. (“EVA”), from earlier in the year.³¹ At the January 2013 Coaltrans³² conference in Miami, EVA’s representative made the following points: 1) displacement of coal by natural gas was taking place since 2010; 2) all of the coal production decline in 2012 was due to natural gas displacement—all 170 million tons;³³ 3) the extended period of low natural gas prices had caused utilities to reconsider their investments of coal plants, citing the Big Sandy coal project canceled by AEP,³⁴ and 4) low natural gas prices in the United States were resulting in higher levels of exports of coal and driving down global coal prices.³⁵ The robust coal rebound referred to by Mr. Schwartz would occur according to EVA when natural gas prices rose above

²⁹ *Id.* at 5-6.

³⁰ Jesse Gilbert & Steve Piper, *Eroding Prospects for Summer Demand Highlight SNL Energy’s August Coal Forecast*, SNL Financial (Aug. 1, 2013).

³¹ Emily S. Medine, *Coal-Gas Switching*, Energy Ventures Analysis, Inc. 4 (Jan. 31, 2013) [hereinafter EVA–Coaltrans].

³² Coaltrans supports conferences on emerging coal trends for market participants. Its conferences are organized on a worldwide basis. The Miami conference quoted here was the United States coal conference. In attendance are CEOs from the coal industry and many business and trade leaders.

³³ EVA–Coaltrans, *supra* note 31, at 2.

³⁴ *Id.* at 20.

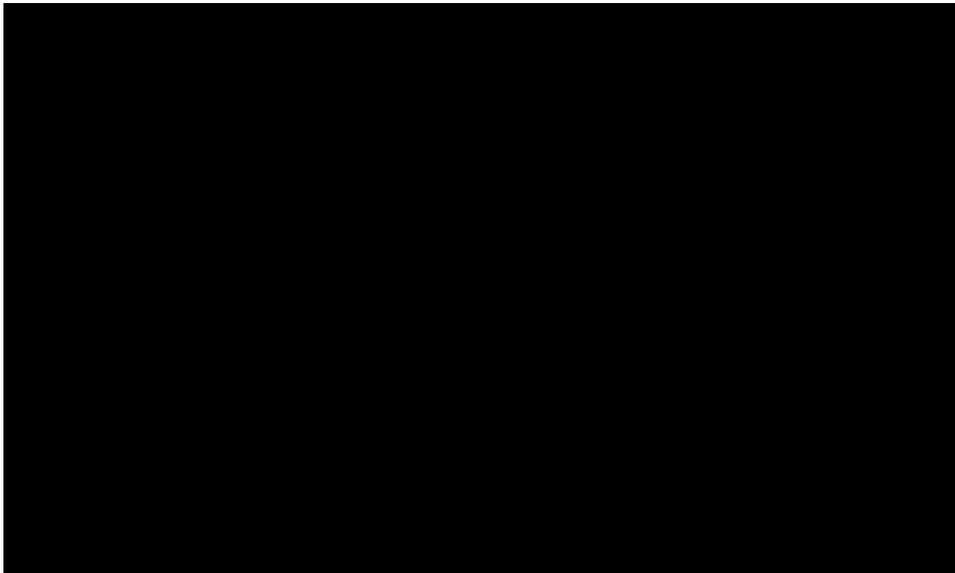
³⁵ *Id.* at 18.

\$5mm/btu.³⁶ According to the EIA, since January 2013 the average monthly price of natural gas rose above \$5.00 mmbtu in only one month.

Had Mr. Schwartz provided a more circumspect analysis of the long-term impacts of low natural gas prices and reflected actual 2013 coal production in both his statements, his claims would have been confounded by the facts of declining production, slowing markets, plummeting prices, and the persistence of low natural gas prices.³⁷

In sum, while Mr. Schwartz is technically correct to portray the EIA's scenario as a growth scenario, the growth scenario is essentially flat. As demonstrated throughout this Verified Statement, in order for Otter Creek to succeed, it would require coal market growth that is far more robust than the flat growth EIA and other coal analysts project.

B. The recent past shows deterioration in PRB demand and the future looks worse.



³⁶ *Id.* at 22.

³⁷U.S. Energy Info. Admin., *Natural Gas*, EIA.gov, <http://www.eia.gov/dnav/ng/hist/rngwhhdm.htm> (last visited Mar. 26, 2015).

The forward outlook for coal gets worse. Mr. Schwartz used the EIA 2013 Annual Energy Outlook (“2013 AEO”) to support his claim of a robust market.³⁸ However, the EIA’s outlook for the PRB has declined precipitously year after year. Year to year comparisons of EIA’s estimates highlight general market direction and production levels. In 2011, the EIA’s AEO Coal Outlook estimated PRB coal production in 2030 at 699 mtpa (See Table II: EIA 2011 AEO). In the 2013 AEO scenario, the EIA’s estimate for 2030 dropped by more than 150 mtpa to 540 mtpa (see Table II).³⁹ In 2014, after Mr. Schwartz’s August 2013 Verified Statement, the EIA reduced its PRB coal outlook in 2030 by 47 mtpa to 493 mtpa (See Table II: EIA 2014). The EIA reduced its 2030 long-term outlook by 206 mtpa in three years.

**Table II: Actual/Projected PRB Production Arch/EIA: 2010-2030 (Table Format)
(Million tons)**

Year	Arch PRB December 2011	EIA 2011 AEO April 2013	EIA 2013 AEO June 2013	EIA 2014 AEO	Actual
2010	473	477	473	473	468
2011	465	465	468	468	463
2012	491	483	431	425	419
2013	514	488	460	447	408
2014	522	486	453	458	418

³⁸ Schwartz Comments, *supra* note 21, at 7.

³⁹ One cannot find this number in the actual EIA file on the website. Mr. Schwartz has combined the projections for Western Montana and Powder River Basin. This combining of categories is a reasonable way to interpret PRB data consistent with EIA’s other definitions of the region. See U.S. Energy Info. Admin., *Total Energy Supply, Disposition, and Price Summary, Reference Case*, EIA.gov, <http://www.eia.gov/oiaf/aeo/tablebrowser/#release=AEO2014&subject=7-AEO2011&table=95-AEO2014®ion=0-0&cases=ref2014-d102413a> (last visited Mar. 25, 2015).

2015	544	491	425	481	
2016	567	493	406	450	
2030		699	540	493	

Mr. Schwartz had access to the earlier EIA Outlooks. The trend was (and is) down, not the robust growth he states. He also had access to mid-year EIA 2013 data showing continued weakened demand. Had Mr. Schwartz included these key data points—EIA reductions in the long-term PRB outlook plus the flat/declining trend evident by actual production through 2Q 2013—there would have been insufficient support for his overly optimistic market perspective for the Otter Creek project.

Figure I, shown above, also strongly suggests that the EIA projections overestimated PRB production for the last several years. For EIA data to be of value it requires broader context. In contrast to Mr. Schwartz’s approach, the standard practice among analysts is to supplement EIA data with knowledgeable market analysis and data of actual performance.⁴⁰

[REDACTED] ⁴¹ [REDACTED]

[REDACTED] For example, [REDACTED]

[REDACTED] The EIA’s 2011 estimate for PRB in 2016 was 493 mtpa.

⁴⁰ The EIA publishes a comparison of its projections against actual performance. It also frequently updates its information with data and analysis on changing trends. See U.S. Energy Info. Admin., *Analysis & Projections: Annual Energy Outlook Retrospective Review – Evaluation of 2013 and Prior Reference Case Projections*, EIA.gov (Apr. 7, 2014), <http://www.eia.gov/forecasts/aeo/retrospective/>.

⁴¹ [REDACTED]

All of EIA’s projections estimate very slow growth for the PRB region, if any. The estimates are consistent with the last three years of coal production in the United States and the PRB. This weak outlook reflects the actual condition of the coal market in the PRB.

C. EIA projections for Montana coal follow the same downward adjustments as the rest of the PRB.

Mr. Schwartz makes an aggressive case for Montana coal—the market for the coal is growing he says:

EIA forecasts growth in domestic demand of 20 million tons over 2011 by 2030 . . . and an increase of 10 million tons in domestic demand by 2019. Importantly, this is just the projected increase in domestic demand for Montana PRB coal. A significant share of the new development of Otter Creek mine coal is likely to be shipped to the growing export market as well.⁴²

However, the data do not support his claims.

Table III. EIA Projections of Montana Coal 2012, 2013 and 2014 and actuals (2011-2014)

Year	AEO EIA 2012	AEO EIA 2013	AEO EIA 2014⁴³	Actual
2011	48.99	41.65	41.65	42.0
2012	43.21	30.95	36.4	36.7
2013	48.83	36.22	43.27	42.2

⁴² Schwartz Rebuttal Comments, *supra* note 22, at 6.

⁴³ U.S. Energy Info. Admin., *Coal Production by Region and Type, Reference Case*, EIA.gov, <http://www.eia.gov/oiaf/aeo/tablebrowser/#release=AEO2014&subject=7-AEO2014&table=95-AEO2014®ion=0-0&cases=ref2014-d102413a> (last visited Mar. 25, 2015).

2014	52.4	39.95	46.3	42.2(est)
2015	58.77	44.2	50.99	
2016	63.06	41.63	48.7	
2020	66.55	53.74	55.3	
2025	76.74	57.42	57.46	
2030	73.5	62.55	56.97	
2035	80.68	68.61	59.25	

Although Mr. Schwartz portrays Montana as a region with rapid demand, the last ten years of growth have been flat. Since 2005, (see Table I) Montana has averaged 41.7 mtpa. The most recently reported period from 2012 to 2014 is in the 42 mtpa range. (Table III: Montana Actual). There have been some up years and some down years, but over the last three years the production has been about average. There are no precipitating events or long term growth trends that Mr. Schwartz can point to sustain an argument of robust growth.

Mr. Schwartz’s claims are incorrect for several reasons. First, looking forward, the 2013 AEO forecast relied upon by Mr. Schwartz shows a 2030 production level of 62.55 mtpa (see Table III) from Montana, 20 mtpa more than actual 2011 production (and average annual production from 2012 to 2014 in the 42 mtpa range).⁴⁴ The 2013 EIA

⁴⁴ Mr. Schwartz makes a point that the 2013 EIA Annual Energy Outlook data he identifies is domestic demand data. He asserts that the mine will also serve an unspecified export demand. Mr. Schwartz refers the reader to: U.S. Energy Info. Admin., *Coal Supply, Disposition, and Prices, Reference Case*, EIA.gov, <http://www.eia.gov/oiaf/aeo/tablebrowser/#release=AEO2013&subject=7-AEO2013&table=95-AEO2013®ion=0-0&cases=ref2013-d102312a> (last visited Mar. 25, 2015). This chart is entitled “Coal Production by Region Type and Reference.” It represents total production by sub-region, including Western Montana. This chart is inclusive of all production with no distinction

AEO demonstrates continued growth after 2030. This level of demand might support a new mine, but according to the EIA this demand level [REDACTED]

[REDACTED].⁴⁵ The 2012-2025 average annual production anticipated by EIA, 2013 EIA Montana estimates is 43.4 million tons, slightly above the historical average.

Second, such an assumption ignores the fact that Cloud Peak Energy and Signal Peak/Gunvor also mine and ship coal out of their Montana operations at Spring Creek⁴⁶ and Bull Mountain for both export and domestic consumption. Production in 2014 for

made for import and exports for Western Montana coal. Other charts in this database do make distinctions. See U.S. Energy Info. Admin., *Total Energy Supply, Disposition, and Price Summary, Reference Case*, EIA.gov, <http://www.eia.gov/oiaf/aeo/tablebrowser/#release=AEO2013&subject=7-AEO2013&table=15-AEO2013®ion=0-0&cases=ref2013-d102312a> (last visited Mar. 25, 2015). This chart, "Supply, Disposition and Prices," nets out U.S. imports and exports to show total U.S. supply. The total production numbers are the same for both charts. Mr. Schwartz's observation regarding the EIA data is wrong.

⁴⁵ The Application before the STB states that the first year of commercial operation for the mine is 2017. Verified Statement of William M. Rowlands at 3, *Tongue River R.R. Co.—Rail Constr. & Operation—In Custer, Powder River & Rosebud Cntys., Mont.*, No. 30186 (S.T.B. Sept. 21, 2012) and reaffirmed in William M. Rowlands' later Verified Statement (S.T.B. Dec. 13, 2012).

[REDACTED]
[REDACTED]
[REDACTED] The date for commencement of mining is January 2019. See ARM 17.24.303_R1_20141021_Otter Creek Mine, Exhibit 202C, Ownership and Control Otter Creek Mine, <http://deq.mt.gov/ea/ottercreek1stoundresponse.mcp>x (last visited Mar. 26, 2015). On March 19, 2015, the DEQ submitted a 65 page list of deficiencies that needed to be corrected. This should take the process through the end of at least 2015 putting the in service date optimistically in 2019 or 2020. [REDACTED]

[REDACTED].
Cloud Peak Energy, Inc., *Annual Report (Form 10-K) 5* (Feb. 14, 2014), available at <http://api40.10kwizard.com/cgi/convert/pdf/CLD-20140214-10K-20131231.pdf?ipage=9391982&xml=1&quest=1&rid=23§ion=1&sequence=-1&pdf=1&dn=1>. The Spring Creek mine serves both domestic and international markets.

export out of these mining operations was approximately 12 million tons.⁴⁷ Each company is producing below capacity levels.⁴⁸ Each company is heavily involved with mining Montana coal for international export. Having made significant capital investments, it is unlikely that these companies will abandon their export expansion plans. In addition, Peabody Energy,⁴⁹ Ambre Energy/Resource Capital Funds,⁵⁰ and Alpha Natural Resources⁵¹ also have plans to move PRB coal off the west coast and into the Asian market.

Third, ACI claims it may open the Otter Creek mine in the 2020 period. According to the EIA's 2013 outlook, in 2020 Montana is expected to produce 54 million tons, 12 million above the current levels. Given the existing competition, there is no prospect for a 20 mtpa Montana mine entering the market in the early 2020 period.

Fourth, Mr. Schwartz's incomplete analysis relied on EIA's 2013 AEO forecast. After TRRC submitted Mr. Schwartz's Verified Statement, the EIA revised its 2014 long-

⁴⁷ Coal and Energy Report, *Powder River/Bull Mountain Production 2008-2013, 2014 Projected*, (Hanou Energy), (Oct. 29, 2014) reports 8.2 million tons projected from Bull Mountain/Signal Peak in 2014. SNL Energy/Companies and Assets/Signal Peak/Power Plants Served reported domestic deliveries of 263,000 tons in 2014. Cloud Peak reports between 4.0 and 4.5 million tons exported. Cloud Peak Energy, *Press Release: Cloud Peak Energy Amends Throughput Agreement with Westshore Terminals to Increase Committed Export Capacity and Extend Term* (Aug. 8, 2014), <http://investor.cloudpeakenergy.com/press-release/business-development/cloud-peak-energy-amends-throughput-agreement-westshore-terminals>.

⁴⁸ Spring Creek production was down slightly in 2014 from 2013 levels. Epps & Fawad, *supra* note 10. Gunvor reported 8.7 million tons in 2013 and has a stated goal for the mine of 15 million tons per year. Christopher Coats, *OSM Increases Signal Peak's Footprint with Environmental Review*, SNL Financial (Oct. 28, 2014).

⁴⁹ Clifford Krauss, *U.S. Coal Companies Scale Back Export Goals*, N.Y. Times (Sept. 13, 2013) http://www.nytimes.com/2013/09/14/business/energy-environment/us-coal-companies-scale-back-export-goals.html?pagewanted=all&_r=0.

⁵⁰ Darren Epps, *Vote Set for Private Equity to Take Over Ambre Energy's U.S. Operations*, SNL Financial (Nov. 28, 2014).

⁵¹ Mayur Sontakke, *Why ANR's Operations in the Powder River Basin Face Challenges*, Market Realist (Nov. 6, 2014), <http://marketrealist.com/2014/11/why-anrs-operations-powder-river-basin-face-challenges/>.

term outlook downward to 57 mtpa by 2030. From the EIA 2011 to the EIA 2014 estimate of 2030 there is an anticipated 16 mtpa reduction of the Montana production estimates. According to the EIA, the out years through 2035 get worse, not better, as the gap between its 2012 and 2014 estimate for Montana is now a 21 mtpa decline. Again, technically there is some projected growth, but the trajectory of production estimates is declining and is insufficient to warrant new mine investment.

D. Price signals undermine what little support there may be for opening Otter Creek.

The trend toward declining PRB production and the erosion in the EIA's long-term production estimate for the PRB and Montana is further illustrated by low coal prices in the region. The spot price for PRB 8800 coal currently stands at \$10.95 per ton.⁵² Few spot market sales occur at this level as coal producers would lose money. For example, ACI's 2014 cost of production in the PRB is \$11.04 per ton.⁵³

Companies, like ACI, achieve a better price through longer-term, more reliable demand secured through multi-year contracts with domestic utilities. ACI, for example, disclosed PRB coal sales for 2014 at \$12.86 per ton and offered guidance for 2015 and 2016 based on some contracted capacity at \$13.39 per ton and \$14.58 per ton, respectively.⁵⁴ Cloud Peak posted estimated 2014 results at \$13.01 per ton and anticipates

⁵² Platts McGraw Hill Financial, *Coal Trader: Incorporating Coal Outlook, Platts Daily OTC Assessment 1* (Mar. 23, 2015).

⁵³ Arch Coal, Inc., *Press Release: Arch Coal, Inc. Reports Fourth Quarter and Full Year 2014 Results* (Feb. 3, 2015, 7:45 AM), available at <http://news.archcoal.com/phoenix.zhtml?c=107109&p=irol-newsArticle&ID=2012926> [hereinafter *Press Release: Arch Coal, Inc.*].

⁵⁴ *Id.*

2015 prices at \$12.92 per ton.⁵⁵ Alpha Natural Resources posted PRB coal revenues at \$11.89 per ton in 2014 and anticipates a slight decline to \$11.83 per ton with 82% capacity committed.⁵⁶

Even as ACI secures contract prices significantly higher than spot prices and higher than some of its peers, the company posted razor thin PRB margins of \$0.28 per ton in 2014.⁵⁷ These slim margins were achieved after the company significantly reduced operating costs in the PRB.⁵⁸ The 2015 EIA STEO anticipates additional price slippage in 2015 and 2016.⁵⁹ The current market price of coal received by ACI and other PRB producers does not cover expenses and sufficient profit to warrant additional investment in new mine capacity. For example, citing weak market conditions, ACI has pulled back an application for a new long-term lease for the West Jacobs mine.⁶⁰

E. The United States domestic price of coal is down and the global thermal export market offers no opportunity for ACI to improve its cash position from the Otter Creek mine.

With shrinking opportunities in the United States, ACI, like many other coal producers, announced plans to move forward with coal export strategies. In 2011 and 2012, rising

⁵⁵ Cloud Peak Energy, Inc., *Press Release: Cloud Peak Energy, Inc. Announces Results for Fourth Quarter and Full Year 2014* (Feb. 17, 2015), available at <http://investor.cloudpeakenergy.com/press-release/earnings/cloud-peak-energy-inc-announces-results-fourth-quarter-and-full-year-2014>.

⁵⁶ Alpha Natural Resources, *Press Release: Alpha Natural Resources Announces Results for Fourth Quarter and Full Year 2014* (Feb. 2, 2015), available at <http://ir.alphanr.com/file.aspx?IID=4100842&FID=27648419>.

⁵⁷ *Press Release: Arch Coal, Inc.*, *supra* note 53.

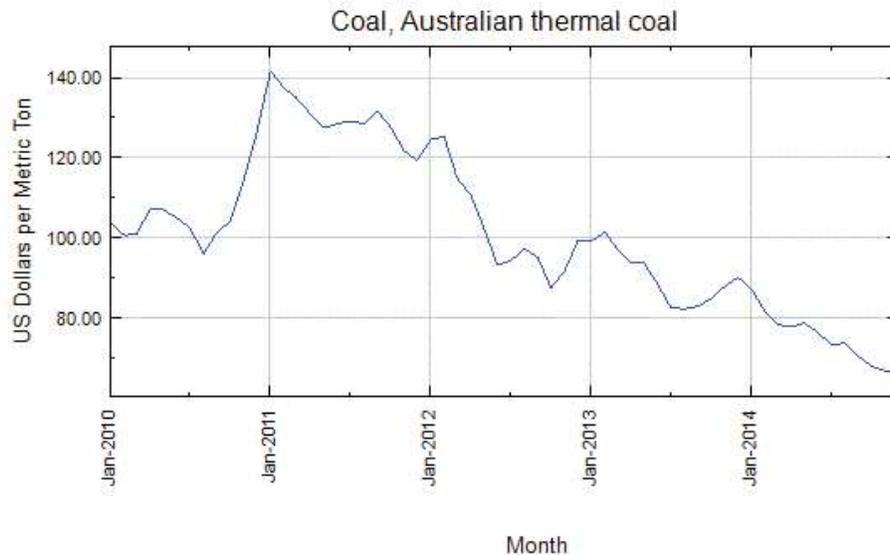
⁵⁸ *Id.*

⁵⁹ *2015 STEO*, *supra* note 5.

⁶⁰ Associated Press, *Arch Coal Cites Weak Market in Request to Withdraw Coal Lease Application in NE Wyoming*, Daily J., <http://www.dailyjournal.net/view/story/950e3db1c7e44f24bd6c38a0efe79a09/WY--Coal-Lease/> (last updated Mar. 9, 2015, 7:44 AM).

global demand and prices on the thermal market gave this scenario plausibility. However, the global thermal coal market is now oversupplied. In the current market and for the foreseeable future, U.S. coal producers and PRB coal producers have limited export opportunities. Current international thermal market sales from the United States are probably based on pre-existing contracts and are not profitable.⁶¹ Going forward, the overall market for U.S. coal producers in the Pacific Rim is likely to get worse.⁶²

Figure II: U.S. Exports: Global Price Collapse



Index Mundi.com⁶³

⁶¹ John Bridges, J.P. Morgan, North America Equity Research, *Global Coal Update: Oversized Mine, Rail and Port Capacity Leads to Skinny Prices; U.S. Miners Watch their Thermometers* (June 29, 2014), available at http://pg.jrj.com.cn/acc/Res/CN_RES/INDUS/2014/6/29/37603388-1ecd-419e-8cbd-bd7d51fc5902.pdf.

⁶² For a detailed analysis of the nature of changes in the global seaborne thermal market as China's 25% market share declines see the Bernstein Research. Bernstein Research, *Asian Coal & Power: Less, Less, Less . . . The Beginning of the End of Coal* 117–24 (June 2013), available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.fossil.energy.gov%2Fprograms%2Fgasregulation%2Fauthorizations%2F2013_applications%2Fsierra_club_13-69_venture%2FEx_110_-_Bernstein_peak_coal_report.pdf&ei=JQcTVbPiJqblsASR6oHYCA&usg=AFQjCNE87qzDcOc_8deqxSAYQTgSZbTE9Q&bvm=bv.89217033,d.cWc.

⁶³ IndexMundi, *Coal, Australian Thermal Coal*, IndexMundi.com, <http://www.indexmundi.com/commodities/image.aspx?commodity=coal-australian&months=60> (last visited Mar. 25, 2015).

International thermal coal prices have collapsed (see Figure II) and are likely to stay low for the foreseeable future. The price of Newcastle Coal, an Australian coal product used as a global benchmark for thermal coal, fell dramatically from 2011 to the present. At its peak in January 2011, the price was \$141.94 per ton. On March 19, 2015, the Newcastle price was \$59.50 per ton.⁶⁴ Looking forward, one Newcastle Coal Futures database identifies coal price contracts from 2016 to 2021 trading in the \$61.00 to \$66.00 range.⁶⁵ (See Figure III) Persistent low prices are a sign that demand is falling. More to the point, the robust assumptions made by ACI and many other coal consultants at the high point of the market in 2011 no longer have a sound basis.

In late 2010,⁶⁶ Peabody Energy and early 2011 ACI⁶⁷ each provided an analysis of the Chinese coal markets using price points in the \$90 per ton range. Each company was predicting net back profits (the amount of profit received by the U.S. coal producer from the international market price of coal minus transport and logistics costs) in the \$20 per ton margins for this market. In 2012, China imported 318 million tons of coal (up from 200 million tons in 2011)⁶⁸ and coal producers worldwide were predicting longer-

⁶⁴ For the current price of coal, see Platts McGraw Hill Financial, *Coal Trader International, Incorporating International Coal Report 1* (Mar. 19, 2015). Some analysts see the price dropping below \$60.00 per ton through 2016. Jonathan Rowland, *Coal Prices to Drop Further – BofA Merrill Lynch*, World Coal (Dec. 3, 2014) <http://www.worldcoal.com/coal/12032015/Coal-prices-to-drop-further-BofA-Merrill-Lynch-coal2059/>.

⁶⁵ *ICE NewCastle Coal Futures Prices*, Barchart.com (Mar. 24, 2015)

http://www.barchart.com/commodityfutures/ICE_NewCastle_Coal_Futures/LQ.

⁶⁶ Peter Gartrell & John Miller, *Peabody Projections Show Lucrative Chinese Market for PRB Coal*, Platts Coal Trader (Dec. 6, 2010).

⁶⁷ Peter Gartrell, *Arch CEO Sees \$20 Range for PRB Coal to Asia*, Platts Coal Trader (Jan. 31, 2011).

⁶⁸ U.S. Energy Info. Admin., *International Energy Statistics 2008-2012*, EIA.gov, <http://www.eia.gov/cfapps/ipdbproject/IEDIndex3.cfm?tid=1&pid=1&aid=3> (last visited Mar. 25, 2015).

term growth from this source.⁶⁹ More recently, Cloud Peak Energy stated it would require a Newcastle price between \$80 and \$90 per ton before selling coal to China.⁷⁰

During 2014, the market for Chinese imported coal and the global coal market more generally cooled (see discussion below) and global prices have collapsed.⁷¹ Most financial analyst projections have evolved to a clear consensus: as China reduces its import needs, sufficient capacity from the Pacific Rim producers (Australia, South Africa, Indonesia, and Russia) exists to meet the needs of the remaining import countries, including India. United States coal producers will fill a niche market but one not much larger than what exists today (see discussion below by Goldman Sachs, J.P. Morgan, Bernstein Research, and Citigroup). This is also the conclusion of the extensively researched product released by Carbon Tracker Institute and the Institute for Energy Economics and Financial Analysis.⁷² A recent compilation of futures market contracts for Newcastle Coal places the price range from 2015 to 2021 in the mid \$60 per ton range.⁷³

⁶⁹ Dan Lowrey, *Woodmac Sees Half of US Coal Production Exported by 2030*, SNL Financial (Mar. 7, 2012).

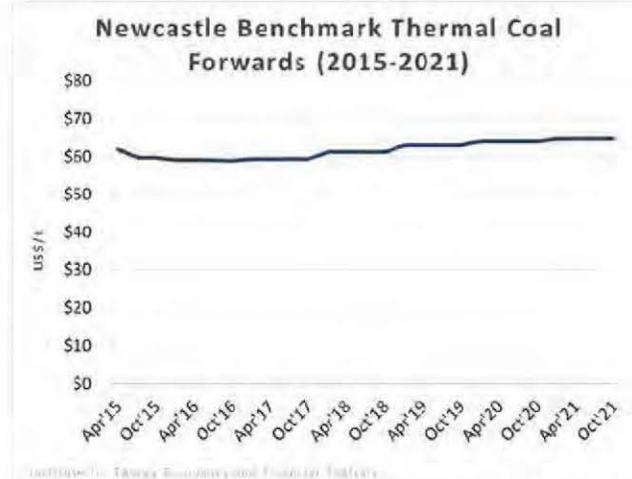
⁷⁰ *Cloud Peak Energy's CEO Discusses Q1 2014 Results – Earnings Call Transcript*, SeekingAlpha.com (Apr. 29, 2014, 5:00 PM), <http://seekingalpha.com/article/2175763-cloud-peak-energys-ceo-discusses-q1-2014-results-earnings-call-transcript?part=single>.

⁷¹ Damian Carrington, *China's Coal Use Falls for First Time this Century, Analysis Suggests*, Guardian (Oct. 22, 2014, 9:37 AM), <http://www.theguardian.com/environment/2014/oct/22/chinas-coal-use-falls-for-first-time-this-century-analysis-suggests>.

⁷² Inst. for Energy Econ. & Fin. Analysis, *Carbon Tracker Initiative* (Sept. 22, 2014), available at <http://www.carbontracker.org/wp-content/uploads/2014/09/Coal-Demand-IEEFA-complete.pdf>.

⁷³ *Stock Market Quotes & Charts: Quote Board*, eSignal.com (Mar. 24, 2015) <http://quotes.esignal.com/esignalprod/quote.action?symbol=NCFQ-ICE>.

Figure III: Newcastle Benchmark Thermal Coal Forwards (2015-2021)



F. The supposed cost of production advantage at Otter Creek is eviscerated by the severe and persistent drop in the price of coal on the global thermal market.

[REDACTED]

[REDACTED] ⁷⁴ The Norwest appraisal, prepared as part of the Montana State Land Board coal lease deliberation, assumed in 2006 that 2015 prices for the first year of production would be between \$6.20 and \$6.82 ⁷⁵ per ton. Using a 2% annual adjustment (and assuming a 2020 date of commercial operation) this would make the first year estimated costs between \$6.90 per ton and \$7.50 per ton. ⁷⁶ ACI has not independently updated the 2006 Norwest appraisal, nor offered its own analysis of the cost of production from the mine. ACI's 2014 cost of production for its PRB mines was \$11.04 per ton and when

⁷⁴ [REDACTED]

Norwest Corporation, *Otter Creek Property Summary Report: Volume I of II* (July 12, 2006).

⁷⁶ Another document prepared by JT Boyd Consultants in 2011 relying on subsequent mining studies of OC place the advantage for ACI at \$4.00 per ton in 2020 and pegs the 2020 cost of production at \$8.96 per ton. John T. Boyd Co., *Powder River Basin Coal Resource & Cost Study* (Sept. 2011), available at <http://www.xcelenergy.com/staticfiles/xcel/Regulatory/Regulatory%20PDFs/PSCo-ERP-2011/8-Roberts-Exhibit-No-MWR-1.pdf>.

adjusted through 2020 ACI's cost of production would be \$12.45 per ton. The relative advantage using these assumptions for Otter Creek is \$5.0 to \$5.6 per ton over Arch's average PRB costs.

TRRC claims about the cost advantage of the Otter Creek mine are offered based on an almost ten-year-old estimate. The conclusory statements Messrs. Blumenfeld and Schwartz make regarding the Otter Creek mine are not based on any actions taken by ACI to verify the estimates independently. The estimate lacks a solid foundation. Assuming this range of relative cost advantage is accurate, a closer look at other potential revenue and expense factors show the purported advantage rapidly disappears.

Table: IV Comparison of ACI/Peabody 2010/11 Estimates of Coal Export Profits versus current markets

	ACI/BTU - December 2010 ⁷⁷	Current
Asian Coal Price	\$96.28	\$65.00
Expense Transport	(\$58.71)	(\$58.71)
Market Price US	(\$13.65)	(\$13.39)
	\$23.92	(\$7.10)

When ACI and Peabody (see Table IV) identified the price they needed to make a comfortable profit on exported coal in 2010 and 2011, they said a comfortable coal price would be \$96.28 per ton. Looking forward, the Newcastle price is in the mid \$60 per ton range.⁷⁸ At this price, using basically the same assumptions and ACI's most recent contracted coal prices for 2015, coal exports lose money. The \$31.00 per ton drop in

⁷⁷ Gartrell & Miller, *supra* note 66. See also Gartrell, *supra* note 67.

⁷⁸ On March 19, 2015, Platts Coal International listed prices for the Quinhuangdao 4200 and 5000 coal products as \$52.50 and \$58.40 per ton respectively. Platts McGraw Hill Financial, *supra* note 64, at *China Coal Index Physical Coal Benchmark Prices*. These coals are comparable to PRB coal. As noted above the Newcastle benchmark price was at \$59.50 per ton.

market price for thermal coal from 2010/2011 to today and through 2020/2021 eviscerates the profit margin identified by ACI and Peabody at the \$96.28 per ton level for exported coal. PRB coal in China and exports to Asia more generally are ‘out of the money’, uncompetitive.

Mr. Schwartz also asserts that Otter Creek would replace higher cost mines and therefore be a good source of coal for domestic use. This is a statement without sufficient foundation. To be accurate, TRRC should support this conclusion with a business plan. Such a plan would reflect a realistic market price for coal in a much smaller domestic market, updated operating costs for Otter Creek certified by ACI (preferably with independent corroboration), and the full debt service costs inclusive of the mine, rail, and port. ACI has taken on full ownership of the mine and partial ownership of the rail and port. Unlike a typical domestic mine where capital investment is restricted to mine acquisition and mine development costs, ACI has determined that, in order to move this coal to market, it must also invest in a rail line and port. [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] The debt burden on Otter Creek does not disappear simply because coal is sold domestically. In fact, the financial viability is made worse the more domestic coal is sold at a lower price than exported coal in a future, presumably more robust market. ACI is already severely overburdened by debt (see discussion below: *Looming Debt Burden*). Otter Creek is only likely to increase ACI’s substantial debt burden.

G. EIA data on exports show a weakening market for United States coal exports both on a short and long-term basis.

Between 2011 and 2013, the EIA increased its estimate of United States thermal coal exports. Recently the EIA has downgraded its short-term exports outlook. Actual thermal coal exports out of the United States have declined since peak 2012 levels (Figure IV: Actual). Export levels are expected to stay flat or drop through 2030 according to a host of investment bankers and analysts (see discussion below of J.P. Morgan, Morgan Stanley, Bernstein Research, and Citigroup).



There are three observations regarding actual thermal coal export performance and the projections of ACI and the EIA. First, actual thermal coal exports peaked in 2012 and have dropped in each year thereafter. (Figure IV: Actual). Second, [REDACTED]

[REDACTED]

⁷⁹ SNL's Coal Forecast of Steam coal demand ranges from 40 mtpa in 2015 rising to 47 mtpa in 2017 and dropping off to 40 mtpa in 2020.

coal. The company published a broad analysis of domestic and global coal markets and export potential out of the United States in March 2012. Nationwide WM projected United States exports would increase to 500 mtpa by 2030.⁸⁵ This analysis was widely distributed within the coal and investor community.⁸⁶ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED];⁸⁹ 3) GDP growth and specific additions to coal fired generation capacity were critical to the increases; 4) United States exports of thermal coal would expand from 53 mtpa in 2012 to 363 mtpa in 2030; and 5) United States market share would rise from 6% to 17% of the world market for thermal coal. [REDACTED]

[REDACTED].⁹⁰

⁸⁵ Wood Mackenzie, *Changing Supply/Demand Fundamentals Allow the U.S. to Reduce Dependence on Foreign Energy and Emerge as Important Energy Player* (Mar. 7, 2012), <http://www.woodmacresearch.com/cgi-bin/wmprod/portal/corp/corpPressDetail.jsp?oid=10429709>.

⁸⁶ Lowrey, *supra* note 69.

⁸⁷ [REDACTED]

[REDACTED]

⁸⁹ [REDACTED]

[REDACTED] See also Wood Mackenzie, *Global Thermal Trade Flow Changes will Ensure Security of Thermal Coal Supply, Albeit at a High Price* (Mar. 14, 2012), <http://www.woodmacresearch.com/cgi-bin/wmprod/portal/corp/corpPressDetailOpen.jsp?pass=10441615>.

⁹⁰ [REDACTED]

WM's aggressive export numbers were tempered by an otherwise bearish analysis of the domestic PRB market. [REDACTED]

[REDACTED]

In February 2015, WM⁹⁶ reversed its outlook on Asian demand for United States coal exports. WM identified a slowing Chinese economy, a growing divergence between commodity price and market growth versus GDP growth, and particularly identified short and medium term problems for United States coal producers⁹⁷ looking to export. The company identified a slowing economy, a change in economic priorities, and new policy directions in China policy with regard to air pollution. The company is projecting that the global thermal market will stay in a condition of oversupply through 2021 plus or minus how many new mine projects are actually delayed.⁹⁸

91 [REDACTED]

⁹⁶ CHINA: Energy Demand has Decoupled Significantly from GDP, says Wood Mackenzie Economist, EnergyAsia (Feb. 17, 2015), <http://energyasia.com/blog/china-energy-demand-decoupled-significantly-gdp-says-wood-mackenzie-economist/>. See also Wood Mackenzie: China's Energy Demand Needs Review Amid Economic Changes, Rigzone (Jan. 29, 2015), http://www.rigzone.com/news/oil_gas/a/136981/Wood_Mackenzie_Chinas_Energy_Demand_Needs_Review_Amid_Economic_Changes/?all=HG2.

⁹⁷ Wood Mackenzie, *Australian Coal Mines Best Positioned; US Most at Risk* (Feb. 8, 2015), <http://www.woodmac.com/public/media-centre/12526159>.

⁹⁸ Rohan Somwanshi, *Analyst: Sporadic Coal Mine Closures to Not Enough to Rebalance Oversupplied Market*, SNL Financial (Feb. 17, 2015).

SNL Energy maintains a database of coal industry information. It also offers a Coal Forecast consisting of supply, demand, and price estimations through 2025 (see Appendix I). [REDACTED].⁹⁹ SNL estimates for the PRB show largely flat production levels but declining overall projections for United States production. Production levels fall through 2025 from 1.008 billion tons per year in 2015 to 999 million tons by 2025. Southern PRB production is flat through 2025 and Montana coal (Northern PRB) drops slightly from 40 mtpa to 38 mtpa. Steam coal export estimates remain largely flat in the 44-47 million ton range through 2020 and then drop to 40 million ton per year by 2035 (See Appendix I).

I. Independent investment analysts overwhelmingly project severe retrenchment in the global thermal coal market.

The four investment perspectives quoted below were originally released in June, July, September, and October 2013. These perspectives support and enrich the trends and direction of the EIA data discussed above. The perspectives provide qualitative support that the export market for United States coal is presently under severe stress and it is likely to remain so for the foreseeable future. The studies and several actions by these banks and analysts form a general consensus that the international coal market is oversupplied. Global coal producers will face low prices and tight margins. Bernstein Research points to the structural nature of the changes stating the trend is not likely to reverse itself. Citibank concludes that the end of the coal super cycle is here. Goldman Sachs says capital shifts from larger mining concerns suggest a significant move away from coal. J.P. Morgan concludes it is not economic to export coal at present.

⁹⁹ [REDACTED]

These trends will likely continue as China's need for coal imports diminish. Each of these analyses uses as a backdrop the dramatic rise of Chinese thermal imports over the last decade. The Chinese import market peaked in 2013 at 330 mtpa.¹⁰⁰ The worldwide market for seaborne was approximately 858 million tons in 2013.¹⁰¹ In 2014, China's coal imports declined to 289 mtpa.¹⁰² When China buys less coal on the global market it drives down demand and price.

Bernstein Research concluded its work in the spring of 2013:

Decelerating power growth and structural weakness in other end markets, combined with more hydro, nuclear and renewables and more coal production and rail capacity in China, add up to the once unthinkable: zero net imports in 2015 and falling Chinese demand by 2016.

Globally, Chinese demand for coal has been the primary driver or the backstop behind every new investment in coal mining over the last decade; the "global coal market" ended with the collapse in price in 2012; regional miners will see almost zero demand in China from 2015.

Once Chinese coal demand starts to fall there is no robust growth for seaborne thermal coal anywhere; developed market demand is weak due to gas, environmental concerns or industrial activity; that leaves just one large structural growth market for seaborne coal: India.¹⁰³

¹⁰⁰ Kalayano Teodoro, *Global Shipping Index Falls to Record Low as China Cuts Coal Imports* (Feb. 11, 2015).

¹⁰¹ Euracoal, *Euracoal Market Report: World Coal Market Developments (1/2014)*, *World Coal Production and Seaborne Trade* (May 2014), available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.euracoal.com%2Fcomponenten%2Fdownload.php%3Ffiledata%3D1401266763.pdf%26filename%3DEuracoal%2520Market%2520Report%25201-14.pdf%26mimetype%3Dapplication%2Fpdf&ei=SgUTVar4LPSRsQT_qIDACg&usg=AFQjCNE7vyzD9bxBMmA-rPtaZpFGHJFATQ.

¹⁰² Teodoro, *supra* note 100.

¹⁰³ Bernstein Research, *supra* note 62, at Cover Page.

The Bernstein analysis concludes that the global thermal coal market will never recover.¹⁰⁴ Thermal coal imports to China declined by 36 million tons in 2014 approximately 11%.¹⁰⁵ Goldman Sachs 2013 view of thermal coal markets cast a profile of a weak and declining market.

Earning a return on incremental investment in thermal coal mining and infrastructure capacity is becoming increasingly difficult. In the short term, a sharp deceleration in seaborne demand (we expect average annual growth to decline to 1% in 2013-17 from 7% in 2007-12) has moved the market into oversupply and caused a downward shift in the cost curve; **we downgrade our price forecasts** to US\$83/t in 2014 and US\$85/t in 2015 (down 13% and 11% respectively) and maintain a relatively flat outlook for the rest of our forecast period to 2017.

Mines are long-lived assets with a long payback period, and investment decisions today are sensitive not just to prices and margins today, but also to projections going well into the next decade. We believe that thermal coal's current position atop the fuel mix for global power generation will be gradually eroded by the following structural trends: 1) environmental regulations that discourage coal-fired generation, 2) strong competition from gas and renewable energy and 3) improvements in energy efficiency. The prospect of weaker demand growth (we believe seaborne demand could peak in 2020) and seaborne prices near marginal production costs suggest that most thermal coal growth projects will struggle to earn a positive return for their owners; in our view, this is reflected in the way diversified mining companies are reallocating their capital towards more attractive sectors¹⁰⁶

¹⁰⁴ *Id.* at 1.

¹⁰⁵ Naomi Christie and Kiyotaka Matsuda, *Shipping Costs Test New Low as China Coal Imports Slide: Freight*, Bloomberg Business (Feb. 5, 2015, 7:01 PM), <http://www.bloomberg.com/news/articles/2015-02-06/shipping-costs-test-new-low-as-china-coal-imports-slide-freight>.

¹⁰⁶ Goldman Sachs, *The Window for Thermal Coal Investment is Closing*, Rocks and Ores1 (July 24, 2013), available at <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB4QFjAA&ur>

Goldman Sachs' price downgrade in 2013 was followed by actual price declines far greater than estimated. Goldman anticipated a price of \$83 per ton in 2014. The average price for 2014 was \$70 per ton.¹⁰⁷ In January 2014, Goldman Sachs sold its stake in a coal port greenfield project in Bellingham, Washington a joint venture with SSA Marine Terminals (40+ million ton per year capacity).¹⁰⁸

In October 2013, J.P. Morgan analysts expressed their concerns regarding the ability of United States coal producers to access the global thermal coal market: “[w]hile the outlook for ILB coal appears stronger than other basins, the region is not immune from the challenged coal market,” Further, “[e]xport markets have been crucial in balancing supply-demand in the US; however, depressed international prices appear to have closed the door on new export contracts and could create domestic oversupply.”¹⁰⁹ In 2014, the company continued to weigh in with its analysis of the global thermal coal trade estimating a decline of United States thermal coal exports through 2016 from 49 mtpa to 36 mtpa.

It's not economic to export US coal at present, and while some sales are continuing; probably driven by take or pay commitments, we doubt new sales will be signed outside long standing relationships.

<http://www.investor.goldman.com/content/dam/investor/2014/01/Goldman-Sachs-Rocks-and-Ores-2013.pdf>&ei=hQkTVd-3GazisATC7II4&usg=AFQjCNHCv0D3bT2qtx2wflhlltQxpg7W6A&bvm=bv.89217033,d.cWc.
¹⁰⁷ *World Bank Commodities Price Data (The Pink Sheet)*, World Bank (Jan. 6, 2015), http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1111002388669/829392-1420582283771/Pnk_0115.pdf.

¹⁰⁸ *UPDATE 2-Goldman Fund Sells Stake in Port Eperator SSA Marine*, Reuters (Jan. 7, 2014, 8:48 PM), <http://www.reuters.com/article/2014/01/08/goldman-port-sale-idUSL2N0KI00U20140108>.

¹⁰⁹ Darren Epps, *Analyst: Illinois Basin Stable but Not Immune to Coal Market Weakness*, SNL Financial (Oct. 8, 2013).

US coal exports are falling more quickly now, but with other countries apparently concluding it's easier to drop costs rather than production, seaborne prices are reaching new lows.¹¹⁰

In September 2013, Citibank¹¹¹ offered its view identifying broad changes in Chinese GDP, pollution and energy policy, internal country improvements, rising influence of renewables, and other energy sources to conclude that coal producer's looking to enter the export market were going to find it very difficult to succeed.

As the range of forecasts for Chinese coal demand is wide, we believe investors should price in higher probabilities of lower coal demand. Optimistic long-dated coal prices may be unsupported. Although lower prices may spur demand growth elsewhere, the demand slowdown in China should more than offset such gains, in our view. Coal exporting countries that have been counting on strong future coal demand could be most at risk. The end of the supercycle should weigh on both the mining and equipment sectors. But sectors that excel at renewable integration, distributed generation, transmission could benefit the most.

In October 2014, several major investment banks announced they would not provide financing to support a large coal mining and export infrastructure in Australia.¹¹² This is one of the largest proposed mining initiatives in the world that would serve the same Asian markets as PRB producers.¹¹³

¹¹⁰ Bridges, *supra* note 61.

¹¹¹ Anthony Yuen et. al., *The Unimaginable: Peak Coal in China*, Citi Research (Sept. 4, 2013), available at <https://ir.citi.com/z5yk080HEXZtoIax1EnHssv%2Bzm4Pc8GALpLbF2Ysb%2F121vGjprPCVQ%3D%3D>.

¹¹² *Briefing: The Outlook for Financing for Australia's Galilee Basin Coal Proposals*, IEEFA (Oct. 22, 2014), available at <http://www.ieefa.org/wp-content/uploads/2014/10/IEEFA-briefing-Galilee-Financiers.pdf>.

¹¹³ Rohan Somwanshi, *Report: U.S. Banks Will Not Fund Australia Coal Terminal Expansion*, SNL Financial (Oct. 28, 2014).

J. Even ACI sees no market for Otter Creek coal.

[REDACTED]

[REDACTED]

114 [REDACTED]
115 [REDACTED]
116 [REDACTED]
117 [REDACTED]
[REDACTED]
119 [REDACTED]

4. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

II. ACI WILL NOT BE ABLE TO FULFILL ITS FINANCIAL OBLIGATIONS FOR ITS PARTICIPATION IN THE TONGUE RIVER RAILROAD AND OTTER CREEK PROJECT.

ACI is not in a position to fulfill its financial obligations to this project. Even if ACI receives the necessary permits to move forward with developing Otter Creek,¹²⁴ it is questionable whether it could deliver on its significant capital commitment in the next 5-10 years. ACI's financial performance for the last decade has seriously lagged the nation's publicly traded companies. Its stock price has collapsed, revenues are down, costs are rising, debt levels are dangerously high, and liquidity has depleted. ACI is reducing production, capital investment, and generally in the market, is considered perilously close to insolvency. The prospect for coal price increases that could improve margins and cash position is unlikely to be of sufficient size or duration to foster a

¹²⁰ [REDACTED]
[REDACTED]
[REDACTED]

¹²⁴ Matthew Brown, *Montana Regulators Say Coal Mine Proposal Can't Proceed Without More Information from Company*, Daily Journal (Mar. 20, 2015, 5:58 PM), <http://www.dailyjournal.net/view/story/c484bf7b155c4ebc8182ff41154dd88f/MT--Otter-Creek-Mine/>.

turnaround in company finances. At the time, the Otter Creek project will require a significant capex infusion the company is likely to have neither the cash reserves nor debt available to complete the project. Much of ACI's Central Appalachian holdings are in the red¹²⁵ and its PRB margins show only the slimmest upside. The company has posted three consecutive years of losses totaling more than \$1 billion. The outlook for 2015 and 2016 suggest reduced production and price increases insufficient to drive a companywide rebound. In addition, further depletion of liquidity is anticipated.

Over the last several years, the significant changes in coal markets domestically and worldwide have frustrated several of ACI's strategic turnaround plans. The company first announced prospective sales specifically to China (discussed above). In responses to questions from the STB and others, ACI clarified its view that it is only going to export some of the coal to China. ACI has no contracts in China.¹²⁶ The company has also targeted Japan,¹²⁷ South Korea, and Taiwan. Over this period, ACI's revenue from Asian sales has dropped. It was presented as a solution a vision for large scale exporting of metallurgical coal out of its Central Appalachian mines. During ACI's 2014/3rd quarter conference call, management put exports on a back burner vying instead for greater

¹²⁵ Appalachian operating margins are posted as negative \$8.82 per ton. Arch Coal, *News Release: Arch Coal, Inc. Reports Fourth Quarter and Full Year 2014 Results* (Feb. 3, 2015), <http://news.archcoal.com/phoenix.zhtml?c=107109&p=irol-newsArticle&ID=2012926> [hereinafter *ACI Fourth Quarter and Full Year 2014 Results*].

¹²⁶ David Coburn, Attorney for Tongue River Railroad Corporation to Kenneth Blodgett, Surface Transportation Board, Docket FD 30186, Information Request # 1, p. 3.

¹²⁷ Recent talks between Japanese utilities and coal producers for new deals going forward have identified Indonesia as a new significant supplier as well as other subbituminous coal suppliers. None of the published reports mention that any U.S. coal producer is in the running for a significant share of the market. Pricing levels discussed in the press place negotiations for coal in the \$60 per ton range and below. Joseph Green, *Japan Seeks Coal, but Not Australian Coal*, World Coal (June 3, 2015), <http://www.worldcoal.com/coal/06032015/Japan-coal-Australian-seeks-2025/>.

domestic share.¹²⁸ At a recent Coaltrans conference in Miami, ACI's CEO, John Eaves, raised the potential for United States coal suppliers to fill voids from future Indonesian coal bottlenecks.¹²⁹

Some coal producers are now pointing to India as a potential long-term importer of coal,¹³⁰ placing potential import figures as high as 200 million tons per year. In 2013, United States coal producers exported less than 1 million tons of thermal coal to India.¹³¹ While India is likely to increase coal imports in the short term, the current providers of coal, principally Indonesia and South Africa, are already in the market and Australian and Indian coal interests are trying to develop new mine capacity in Australia.¹³² Furthermore, the Indian government has set an import goal significantly lower than current levels.¹³³

In its 2014 year-end filing, ACI acknowledged that coal exports from the United States would likely see further decline in 2015.¹³⁴ This represents a significant downward

¹²⁸ Arch Coal's (ACI) CEO John Eaves on Q3 2014 Results - Earnings Call Transcript, Seeking Alpha (Oct. 28, 2014 3:54 PM ET), <http://seekingalpha.com/article/2606325-arch-coals-aci-ceo-john-eaves-on-q3-2014-results-earnings-call-transcript?page=6&p=qanda&l=last> [hereinafter *ACI Q3 2014 Results*].

¹²⁹ Darren Epps, *US Coal Exports Finish 2014 Below 100 Million Tons, But CEOs Remain Resolute*, SNL Financial (Feb. 9, 2015).

¹³⁰ *Indian Coal Demand Growth Overtakes China*, Wood Mackenzie (Mar. 04, 2015), <http://www.woodmac.com/public/views/india-coal-growth>.

¹³¹ U.S. Energy Info. Admin., *Quarterly Coal Report October – December 2013 16* (2013), available at <http://www.eia.gov/coal/production/quarterly/pdf/0121134q.pdf>.

¹³² Tim Buckley & Tom Sanzillo, *Stranded: A Financial Analysis of GVK's Proposed Alpha Coal Project in Australia's Galilee Basin*, The Institute for Energy Economics & Financial Analysis (June 2013), available at <http://ieefa.org/report-stranded-alpha-coal-project-in-australias-galilee-basin/>.

¹³³ Krishna N. Das, *Goyal: May Stop Thermal Coal Imports in 2-3 Years* (Nov. 13, 2014), <http://in.reuters.com/article/2014/11/12/india-coal-imports-idINKCN0IW0FJ20141112>.

¹³⁴ *ACI Fourth Quarter and Full Year 2014 Results*, *supra* note 125.

estimate from the more aggressive estimates offered to the Surface Transportation Board by its consultants in this proceeding.

A. ACI’s financial performance is weak with very little upside potential.

1. Market and Coal Industry: Lagging Stock Performance

For most of the last twenty years, ACI has been a marginal stock performer and significantly lagging the Dow Jones Industrial Average (see Table VII). From 2001 to the present, the SNL Coal Index, a measure of industry performance, rose 26% while ACI declined by 87%. ACI’s stock has been in a precipitous decline since 2008, falling from a peak of \$ 67.00¹³⁵ per share to its current levels, which hover around \$1 per share. Arch has also underperformed its peers.

Figure V: Arch Coal Versus Dow Jones: Percent Growth/Loss (20 years)

Benchmarks	Arch Coal	Dow Jones Industrial
One Year	(-62%)	(+12%)
Two Year	(-77%)	(+41%)
Five Year	(-94%)	(+80%)
Ten Year	(-92%)	(+71%)
Twenty Year	(-91%)	(+354)

SNL Energy, February 11, 2015

¹³⁵ *ACI Historical Prices*, Yahoo! Finance, <http://finance.yahoo.com/q/hp?s=ACI&a=07&b=12&c=2007&d=02&e=20&f=2015&g=d&z=66&y=1584>.

2. *ACI's Declining Revenues*

ACI revenues grew from 2008-2011, at a time when the company also led its industry peers in stock performance. Since 2011, ACI revenues have declined by \$950 million, or 25%. Export revenues from 2012 to 2013 dropped by \$331 million.¹³⁶ The short-term industry consensus is for flat or declining revenues in 2015¹³⁷ and ACI expects further declines in export sales.

Table III: ACI Revenues 2008-2014

	2008	2009	2010	2011	2012	2013	2014
Revenues	2.983	2.576	3.186	3.883	3.768	3.014	2.937

Arch Coal, Form 10K CY 2008, 2010, 2012, 2013

3. *ACI and PRB Producer Financial Performance 2010-2014*

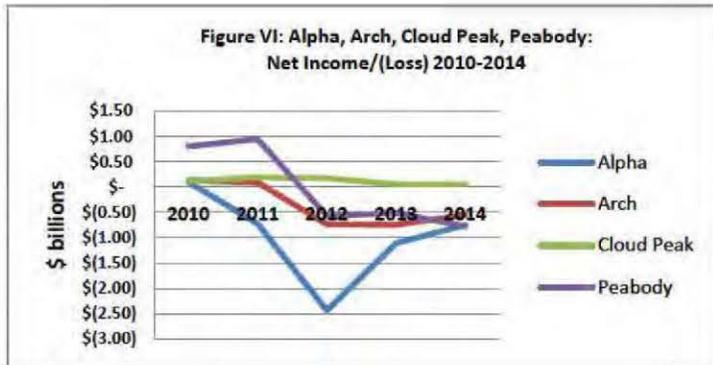
In 2014, ACI posted its third consecutive year of losses. The company improved its performance in 2014, posting losses of \$558 million against losses in excess of \$700 million in 2011 and 2012. Other large PRB producers also posted losses or marginal gains. Peabody, the PRB's largest producer also posted the largest losses but not quite as large as ACI.

¹³⁶ All Export revenue was \$1.153 billion in 2012 and \$822 million in 2013, and Asian coal export revenue dropped from \$203 million in 2012 to \$160 million in 2013. Arch Coal, Securities & Exchange Comm'n (Form 10-K) 19 (Mar. 01, 2013),

<https://www.sec.gov/Archives/edgar/data/1037676/000104746913002059/a2213264z10-k.htm>;
Arch Coal, Securities & Exchange Comm'n (Form 10-K) 19 (Feb. 28, 2014),

<https://www.sec.gov/Archives/edgar/data/1037676/000104746914001604/a2218540z10-k.htm>.

¹³⁷ Darren Epps, *Coal Industry Looks to 2016 for Relief from Low Natural Gas Prices*, SNL Financial (Feb. 11, 2015).



Institute for Energy Economics and Financial Analysis

4. Declining ACI Liquidity

In a severely declining market, ACI has concentrated on cost reduction and management of its liquidity. ACI designs its liquidity management efforts to show investors that the company has the resources to weather a prolonged down cycle. In ACI's 2013 10K, ACI described its liquidity position:

As described below, we took actions during the fourth quarter of 2013 to further bolster our liquidity and extend debt maturities. These proactive steps will help us navigate the current market cycle by providing us greater flexibility. We now have more than \$1.4 billion of liquidity, with \$1.2 billion of that in cash or highly liquid investments. We have no meaningful maturities of debt until 2018, after successfully refinancing our 2016 notes without increasing our interest costs; and significantly relaxed financial maintenance covenants. We have suspended or eliminated most financial maintenance covenants that pertain to our \$250 million revolver until June of 2015, when a relaxed, senior secured leverage ratio covenant steps back in. Until then, only a minimum liquidity covenant remains in place. With these transactions, we have implemented a flexible capital structure, with high levels of

prepayable debt, which should allow us to de-lever our balance sheet, should markets and our cash flows improve.¹³⁸

From 2011 to 2013, ACI increased its cash and cash equivalents from \$138 million to \$911 million.¹³⁹ During 2014, ACI's cash and cash equivalent declined to \$734 million.¹⁴⁰ ACI's highly liquid short-term investments remained flat year-to-year 2013 to 2014. In total, by the end of 2014, ACI's position from cash and short-term investment declined to \$983 million, down from \$1.2 billion identified at the end of 2013.

Liquidity is the top financial priority for ACI officials.¹⁴¹ Cash and cash equivalents are down. ACI's CFO, John T. Drexler, reassured the investment community that most of ACI's liquidity was in cash and short-term investments with only a limited amount in its credit lines.¹⁴²

¹³⁸ Arch Coal, Sec. & Exch. Comm'n (Form 10-K) 68 (Feb. 28, 2013), <http://www.sec.gov/Archives/edgar/data/1037676/000104746914001604/a2218540z10-k.htm>.

¹³⁹ *Id.* at F-8.

¹⁴⁰ *Press Release: Arch Coal, Inc., supra* note 53.

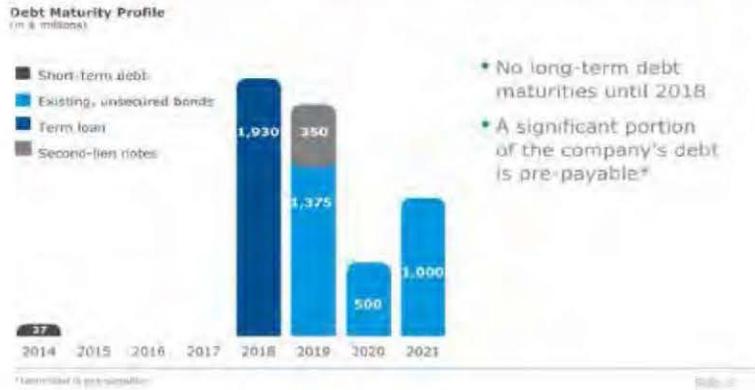
¹⁴¹ *Arch Coal's (ACI) CEO John Eaves on Q4 2014 Results – Earnings Call Transcript*, SeekingAlpha.com (Feb. 3, 2014, 7:48 PM), <http://seekingalpha.com/article/2880806-arch-coals-aci-ceo-john-eaves-on-q4-2014-results-earnings-call-transcript>.

¹⁴² *ACI Q3 2014 Results, supra* note 128.

5. Looming Debt Burden

Figure VII: Arch Coal Debt Burden Looking Forward

Arch's funded debt maturity profile extends to 2018



Arch Coal

[REDACTED]

[REDACTED]

[REDACTED] These

observations made in June 2013 remain industry consensus today.

According to ACI, from 2018 to 2021, it will be required to address \$5.1 billion in debt (See Figure VII). Depending upon the final capital contribution ratios set between the TRRC partners, ACI could pay some or all of the capital to develop the rail and mine.

[REDACTED]

[REDACTED] ACI also owns a 38% interest in the Millennium

143 [REDACTED]

144 [REDACTED]

145 [REDACTED]

Bulk Terminal, which is expected to move forward during the same time-period. The cost of this project is currently listed at \$650 million.¹⁴⁶

ACI currently is on negative credit watch by Standard and Poor's and Moody's and has a CCC rating from Fitch.¹⁴⁷ Analysts¹⁴⁸ place some of the company's corporate bond yield to maturity at 37%, reflecting the sharp downturn in equity value and weak outlook. ACI's distressed credit profile suggests that such a heavily leveraged project and series of related investments during the 2018-2021 period would meet strong headwinds from the investment community.

WM analysts summarize the current state of the investment environment in the PRB:

[REDACTED]

[REDACTED]¹⁴⁹

III. THE TRRC PROJECT IS NOT IN THE PUBLIC INTEREST.

The Surface Transportation Board should reject TRRC's permit request. This permit and supporting materials ask permission for a project that is neither reasonable nor prudent. The only benefit that will accrue to the public will be incidental to other considerations.

¹⁴⁶ Ambre Energy, Millennium Bulk Terminal (2012), available at <http://www.ambreenergy.com/millennium-bulk-terminal>.

¹⁴⁷ Mayur Sontakke, *What Credit Rating Agencies Think about Arch Coal*, Market Realist (October 20, 2014, 1:00 PM), available at <http://finance.yahoo.com/news/credit-rating-agencies-think-arch-170019501.html>.

¹⁴⁸ Mayur Soutakke, *Why Arch Coal's Debt Profile Hinges on Liquidity* (Oct. 20, 2014), <http://finance.yahoo.com/news/why-arch-coal-debt-profile-130018583.html>.

¹⁴⁹ [REDACTED]

A leading PRB coal company executive in a recent interview observed that Japanese coal consumers were looking at U.S. ports to supply coal from the United States 30 and 40 years¹⁵⁰ into the future. TRRC (ACI and BNSF) have asked the STB for permission to move forward now.

ACI officials as part of this proceeding have acknowledged the weak market that existed in 2012 when they submitted their application. [REDACTED]

[REDACTED] 151 [REDACTED]

[REDACTED] The EIA, another key resource for market information has consistently downgraded the expectations of PRB market growth and is now also dampening its outlook on PRB export potential. Most major investment banks conclude likewise and my organization along with Carbon Tracker Institute has produced arguably one of the most extensive and publicly available studies on global coal markets in the world. ACI still has confidence in the future of Asian exports but at no specified time, in a variety of prospective places, not necessarily with Otter Creek as the resource or with ACI as the supplier. TRRC and ACI produce no business plan to outline future profitability in part because to do so would be premature.

As a former public finance official responsible for investing a \$156 billion public pension fund in companies like ACI and as a senior manager with extensive government to business procurement experience, I am quite attuned to how private companies use

¹⁵⁰ Darren Epps, *In Interview: Cloud Peak CEO Makes the Case for Coal Export Strategy*, SNL Financial (Feb. 15, 2015).

¹⁵¹ [REDACTED]

public resources to build value. In this case, TRRC seeks a public decision in the form of a permit from the Surface Transportation Board. TRRC does so having provided evidence that barely meets the definition of a speculative market. The Tongue River Railroad and Otter Creek mine have a high risk of loss. The expectation of reward is limited and without meaningful foundation from TRRC.

TRRC is not seeking this permit decision, an allocation of public rights and resources, to provide public benefit that one would expect from a private company. If approved with the information, background, and support TRRC offered, it would award an unpromising private venture with very little expectation of serving the public interest. ACI's inability to produce a business plan and its reliance on broad demand assumptions is of concern. ACI, a company in a severe state of financial crisis, needs to adopt higher standards of diligence when spending annually on speculative projects.

There is no evidence that more coal mining has any public benefit to the nation at this point. Coal markets are oversupplied here and abroad. Whatever markets will exist in the future, the proposed Otter Creek mine will play an insignificant role. The idea that the mine is cost competitive does not stand up under even modest scrutiny.

The ancillary public benefits also cannot be found in this presentation. The lack of a real time frame means there is no discussion of when job growth will occur from construction or new mine employment. There is no discussion of when enhanced tax collection can start. The government cannot plan royalty income at the state and federal level from this mine project. Neither BNSF nor ACI has Otter Creek in any known capital construction plan. These normal components of a timely, reasonable, and prudent

application to the Surface Transportation Board are non-existent. This project and application are premature.

More traditional investment analysis yields additional insights worthy of the Surface Transportation Board's consideration. ACI is in severe financial distress. Any responsible financial scenario suggests that there will be a major reorganization of ACI over the next few years, including a high potential for sale or trading non-core assets like Otter Creek mine. United States coal mining assets are trading at historically low values.¹⁵² In this respect, a decision to approve the permit serves ACI's short-term objective to enhance its asset base, which will help ACI in negotiations about its financial future. In this case, the public interest, the domain of the Surface Transportation Board, is placed second to a host of other considerations.

¹⁵² See Darren Epps, *From \$2 to \$296M, Coal Acquisitions Hit Furious Pace as New Players Arrive*, SNL Financial (Nov. 12, 2014).

APPENDIX I: SNL Coal Supply Forecast (1000 tons)

As Of: 12/31/2014

<i>Term</i>	<i>Central Appalachia</i>	<i>Northern Appalachia</i>	<i>Southern Appalachia</i>	<i>Illinois Basin</i>	<i>Southern Powder River Basin</i>	<i>Northern Powder River Basin</i>	<i>Uinta Basin</i>	<i>Gulf and Interior</i>
15-Jan	114,000	128,000	16,000	146,000	405,000	40,000	35,000	50,000
16-Jan	109,000	125,000	16,000	150,000	411,000	39,000	33,000	50,000
17-Jan	101,000	122,000	15,000	157,000	416,000	39,000	31,000	50,000
18-Jan	92,000	120,000	14,000	170,000	416,000	39,000	29,000	50,000
19-Jan	90,000	118,000	13,000	178,000	416,000	38,000	28,000	50,000
20-Jan	86,000	116,000	13,000	184,000	412,000	38,000	28,000	50,000
21-Jan	83,000	114,000	13,000	188,000	411,000	38,000	28,000	50,000
22-Jan	83,000	114,000	13,000	190,000	405,000	38,000	28,000	50,000
23-Jan	83,000	114,000	13,000	195,000	404,000	38,000	28,000	50,000
24-Jan	83,000	114,000	13,000	199,000	404,000	38,000	28,000	50,000
25-Jan	82,000	113,000	13,000	199,000	404,000	38,000	28,000	50,000

<i>Other Western Basins</i>	<i>Total Basin Production</i>	<i>Steam Coal Imports</i>	<i>Total Steam Coal Supply</i>
74,000	1,008,000	9,000	1,017,000
72,000	1,005,000	9,000	1,014,000
70,000	1,001,000	9,000	1,010,000
68,000	998,000	9,000	1,007,000
66,000	997,000	9,000	1,006,000
64,000	991,000	9,000	1,000,000
63,000	988,000	9,000	997,000
63,000	984,000	9,000	993,000
63,000	988,000	9,000	997,000
63,000	992,000	9,000	1,001,000
63,000	990,000	9,000	999,000

VERIFICATION

I, Thomas Sanzillo, hereby verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Handwritten signature of Thomas Sanzillo in blue ink, consisting of a stylized 'T' and 'S'.

Thomas Sanzillo

Dated this 25 day of March, 2015.

RESOLUTION NO. 14-39

A Resolution of the City Council of the City of Whitefish, Montana, to request that the Surface Transportation Board and Montana Department of Environmental Quality hold public hearings in western Montana, including Whitefish, during the review process for the proposed Tongue River Railroad and Otter Creek Mine in Southeast Montana.

WHEREAS, the City of Whitefish, Montana, is an historical railroad town bisected by the Hi-Line rail line operated by Burlington Northern Santa Fe (BNSF) railroad company; and

WHEREAS, this rail line represents one of two routes through western Montana that are likely to be used to transport coal from Southeast Montana to West Coast export terminals; and

WHEREAS, Arch Coal's proposed Otter Creek Mine in Southeast Montana is designed to supply coal to West Coast coal export terminals; and

WHEREAS, the proposed Tongue River Railroad would be the main conduit for transporting coal from Otter Creek to the existing BNSF line; and

WHEREAS, developing the Otter Creek Mine and building the Tongue River Railroad could lead to increased coal train traffic through Whitefish; and

WHEREAS, that increased traffic could add to the congestion already caused by Bakken crude oil trains that have contributed to delays and adverse rescheduling of Amtrak's Empire Builder route and increasing delays at two at-grade crossings, Birch Point and Second Street, in Whitefish; and

WHEREAS, the Whitefish community lacks the funding to mitigate community impacts of increased train traffic through construction of quiet zones, underpasses or overpasses; and

WHEREAS, the addition of loaded coal trains to the existing mix of freight traffic requires mitigation planning in the event that a derailment dumps loaded railcars of coal or crude oil in or around Whitefish, with additional complication caused to the Whitefish community if Whitefish Lake is affected since the Lake is one of their public water sources; and

WHEREAS, these impacts may affect the health and quality of life of Whitefish residents; and

WHEREAS, the Surface Transportation Board has committed to consider down-line impacts in the Environmental Impact Statement (EIS) for the Tongue River Railroad, and the Surface Transportation Board has authority to require railroad companies to help mitigate community costs.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: The City of Whitefish has a unique interest in the building of the Tongue River Railroad and the development of the Otter Creek Mine due to its location that could affect the health and well-being of Whitefish residents, and that Whitefish stands to be affected by new coal train traffic.

Section 2: The Whitefish City Council respectfully requests the Surface Transportation Board to actively seek input from the Council and Whitefish residents for inclusion in the draft EIS for the Tongue River Railroad.

Section 3: The Whitefish City Council respectfully requests that the federal Surface Transportation Board and state Department of Environmental Quality hold public hearings in western Montana, including Whitefish, during the public comment periods on the draft Environmental Impact Statements for the Tongue River Railroad and Otter Creek Mine, respectively.

Section 4: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS 2ND DAY OF SEPTEMBER, 2014.

John M. Muhlfeld, Mayor

ATTEST:

Necile Lorang, City Clerk

Approved by a 6-0 vote of the Whitefish City Council on September 2, 2014



Missoula City-County Health Department
AIR POLLUTION CONTROL BOARD

301 West Alder Street | Missoula MT 59802-4123
www.missoulacounty.us/HealthDept

Phone | 406.258.4770
Fax | 406.258.4857

November 17, 2016

Millennium Bulk Terminals NEPA EIS
c/o ICF International
710 Second Avenue, Suite 550
Seattle, WA 98104

To Whom It May Concern:

On May 17, 2012, the Missoula City-County Air Pollution Control Board (Board) submitted public comment to the Army Corps of Engineers regarding scoping for an environmental impact statement for the numerous proposed coal export terminals in Oregon and Washington, including the Longview terminal. The Board administers matters pertaining to the Missoula City-County Air Pollution Control Program in order to require the use of all available practicable methods to reduce, prevent and control air pollution in the City and County.

Recognizing the Missoula Valley and surrounding communities of Clinton, Turah, Bonner, Milltown, East Missoula, Frenchtown and Huson could experience significant adverse effects from the proposed operation of these terminals, the Board requested that a comprehensive programmatic environmental impact statement be conducted and include analyses of the terminals' indirect and cumulative impacts on Missoula and other Montana cities and counties. It is evident from reviewing the Longview National Environmental Policy Act (NEPA) Draft Environmental Impact Statement (DEIS) that our request was not given consideration by the Army Corps of Engineers.

The Millennium Bulk Terminals-Longview (MBTL) NEPA DEIS acknowledges that the sole purpose of the proposed terminal is to ship coal delivered via rail from western states to Asia, and that the coal is destined to be burned in Asia. However, the DEIS then fails to consider any of the impacts from the shipping and burning of the coal on areas not immediately adjacent to the proposed terminal.

In examining the project's cost, the DEIS includes in its analysis the cost for shipping coal from the coal mines to the proposed terminal (S. 2.2). This suggests the Army Corps of Engineers is willing to consider financial costs across the breadth of the project, but does not afford the same consideration to the environmental costs.

We will address three of these costs:

1.0 Air Quality.

The Missoula Valley lies in a bowl surrounded by hills and mountains, and experiences frequent air inversions that trap pollutants. Fine particulate (PM_{2.5}) levels in Missoula have come very close to exceeding the 24-hour PM_{2.5} National Ambient Air Quality Standard (NAAQS).

Missoula's rail yard/switching yard bisects the downtown area, with thousands of residents living within a half mile of the tracks. By significantly increasing the current number of trains through Missoula, the Proposed Action would exacerbate an already sensitive air quality situation and expose thousands of Missoula residents to additional diesel exhaust from rail traffic. The DEIS recognizes that the purpose and viability of the proposed terminal relies on shipping coal from the Powder River Basin to the proposed terminal for export to Asia. However, the DEIS improperly neglects to examine the air quality and human health impacts of shipping that coal through Montana communities to the proposed terminal.

2.0 Rail Safety and Capacity.

While the Corps' NEPA DEIS focuses only on the area immediately surrounding the proposed terminal, the MBTL State Environmental Policy Act (SEPA) DEIS map (SEPA DEIS Ch. 5, Figure 5.1-1) illustrates that trains transporting up to 44 million metric tons per year (MMTPY) of coal from the Powder River Basin to the proposed terminal will go through our communities along the northern route. The DEIS projects that up to 16 trains per day (eight empty and eight full) will travel to and from the terminal (S. 6.1) and therefore also presumably along Montana rail lines. All increases in rail use increase risks of derailments and accidents across the cargo spectrum. Catastrophic derailments and accidents involving hazardous cargo affect air quality and endanger citizens' health and well-being. In addition, the City of Missoula has two at-grade crossings and two rail overpasses. Outside of the city, there are 10 additional at-grade crossings bisecting small communities along the rail line. Several have no alternative route for emergency response. Blocked rail crossings can lead to delayed response times for emergency vehicles, increased emissions from idling vehicles and decreased ability to quickly evacuate populations during disasters such as wildfires and toxic spills. The DEIS fails to address any of these potential impacts to Missoula communities from the construction and use of the proposed Longview terminal.

3.0 Climate Change.

Increases in CO₂ from burning coal in Asia via the Proposed Action will contribute to climate change globally and locally. However, the DEIS greenhouse gas

analysis only takes emission from the construction and operation of the proposed terminal into account. The document entirely neglects discussion of the local and global consequences of the combustion in Asia of these 44 MMTPY of coal. In addition, despite addressing local mitigation measures for air quality impacts, wetland impacts, etc. (Ch. 8), the document fails to list possible local mitigations to greenhouse gas emissions and the project's contributions to climate change.

The Proposed Action supports infrastructure for burning coal for another 30 years and is antithetical to the December 2015 Paris agreement made by 195 nations, including China, to seriously work to reduce the threats of climate change to the planet by reducing the burning of fossil fuels.

Because the DEIS does not consider the environmental costs beyond the site of the terminal, the sections on rail safety (S. 6.2), vehicle transportation (S. 6.3), air quality (S. 6.6), coal dust (S. 6.7) and greenhouse gas emissions (S. 6.8) are insufficient.

This conduct of the NEPA process is fundamentally flawed and inappropriately minimizes all of the project's potential environmental and transportation impacts. It is not possible to construct the proposed terminal without creating major environmental impacts outside the narrow study area defined by the DEIS.

In conclusion, the proposed coal export terminal would create significant adverse impacts to our community, our region and the planet that cannot be mitigated. Because of these unavoidable and significant adverse impacts and because of uncertainties and missing essential information in the DEIS, we ask that you select the NO ACTION alternative. Thank you for considering our comments.

Sincerely,



Ross Miller, Chair
Missoula City-County Air Pollution Control Board

ATTACH: Missoula City-County Air Pollution Control Board Request for a Comprehensive Programmatic Environmental Impact Statement for the Proposed Coal Ports on the Northwest Coast. May 2012.



May 17, 2012

Brig. Gen. John McMahon, Commander and Division Engineer
U.S. Army Corps of Engineers Northwestern Division
P.O. Box 2870
Portland, OR 97208-2870

Col. John Eisenhower
Commander, Portland District
U.S. Army Corps of Engineers
P.O. Box 2946
Portland, OR 97208-2946

Col. Bruce Estok
Commander, Seattle District
U.S. Army Corps of Engineers
P.O. Box 3755
Seattle, WA 98124-3755

Re: Request for a Comprehensive Programmatic Environmental Impact Statement for the Proposed Coal Ports on the Northwest Coast

Dear Brig. Gen. John McMahon,

On behalf of the people of the County of Missoula, the Missoula Air Pollution Control Board respectfully requests that you prepare a comprehensive programmatic environmental impact statement (PEIS) for the numerous proposed coal export terminals in Oregon and Washington. We also request that you hold public hearings in Montana in order to gather public testimony from all affected people along the proposed rail routes. Missoula and other Montana counties could experience significant impacts from proposed coal transport from the Powder River Basin in Montana and Wyoming to terminals along the Pacific Coast.

Currently, there are four coal-export terminal projects pending before the Corps: the Gateway Pacific Terminals site at Cherry Point, Washington; the Millennium Bulk Logistics site at Longview, Washington; the Oregon Gateway Terminal at the Port of Coos Bay, Oregon; and the Coyote Island Terminal site at Port Morrow, Oregon. Additional permit applications are anticipated for a Kinder Morgan project at the Port of St. Helens, Oregon, and the RailAmerica proposal at the Port of Grays Harbor, Washington. Additionally, existing port terminals at port facilities in British Columbia are already receiving coal shipments and are considering expansions of their own.

Taken together, the announced capacity of the planned U.S. projects is approximately 150 million additional tons of coal per year. Operating at full capacity, these plans would mean approximately 60 coal trains – each about a mile and a half long – moving through the Northwest, every day year round. These trains could pass through Missoula, Montana, and we believe, could result in a significant adverse effect on our community, which should be considered in any environmental review of these proposals.

Brig. Gen. John McMahon, Commander and Division Engineer
Col. John Eisenhower
Col. Bruce Estok
Page 2

May 17, 2012

Such analysis is allowed for, and most likely required, under the National Environmental Policy Act (NEPA). Under Section 1508.25(a)(1) and (2) of the Council of Environmental Quality's NEPA regulations, this environmental review must collect, analyze, and consider connected and cumulative actions for any federally supported project. Further, "cumulative" and "similar" actions should be discussed within a single environmental impact statement, necessitating the development of a PEIS.

The railroad bisects north Missoula. This results in stoppage of traffic flow on some of our streets, which are heavily used by people coming and going from work. Increased train traffic would cause much more frequent delays, resulting in additional emissions of pollutants from idling cars.

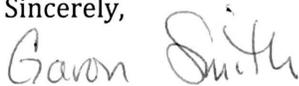
Citizens who live near the tracks already complain about the noise of train horns and coupling and are urging the city to install the necessary equipment at crossings to implement railroad quiet zones. Lack of funding constrains us.

In addition, the increased diesel exhaust would exacerbate our wintertime air quality problems, especially during air inversions. A large part of Missoula is located in an EPA designated air stagnation zone, and is dangerously close to exceeding current EPA PM2.5 standards. Increased diesel particulate matter and coal dust are serious concerns of people living in residential neighborhoods near the rail line.

Finally, any environmental analysis of these proposals must consider the negative effects that burning the large volumes of coal would have on air quality and climate. This coal would be shipped overseas to Asia. With access to our cheap coal, countries in Asia will be encouraged to build new coal-fired power plants, instead of transitioning to cleaner energy sources. This will lock in reliance on coal as a source of energy for the life of these power plants (thirty-plus years). Carbon dioxide, particulates and heavy metals such as mercury are carried back to North America on world-wide air currents and are currently found in Northwest rivers and mountain tops. Greenhouse gas emissions from the transport and combustion of coal will have an astronomically negative effect on the world's climate.

Please ensure that your environmental reviews of these proposals consider the effects on the community of Missoula and other impacted communities. Specifically, we urge you to conduct a comprehensive programmatic EIS that includes an analysis of all of the indirect and cumulative environmental impacts, including the impacts on Montana communities, from all proposed coal ports in the Northwest. We further request that you hold a public hearing in Missoula, Montana.

Sincerely,



Garon Smith, Ph.D.

Chair, Missoula City-County Air Pollution Control Board

cc: Missoula City Council, 435 Ryman, Missoula, MT 59802
Missoula Board of County Commissioners, 200 West Broadway, Missoula, MT 59802
Senator John Tester, 130 W. Front Street, Missoula, MT 59802
Senator Max Baucus, 280 E. Front Street, Missoula, MT 59802
Representative Dennis Rehberg, 301 E. Broadway, Suite #2, Missoula, MT 59802

Bonner Milltown Community Council
Box 655
Milltown MT 59851
28 November 2012

Missoula County
Board of Commissioners
200 W Broadway
Missoula MT 59802

Re: Scoping hearing by USACE in Spokane on December 4, 2012; export of Montana coal

Dear Commissioners

The Bonner Milltown Community Council requests that Missoula County send a representative to the Army Corps of Engineers EIS scoping hearing to be held in Spokane on December 4th, 2012 and provide public comment for the USACE Cherry Point Terminal EIS Scoping Process. The purpose of the scoping hearings is to define issues and public concerns with the Cherry Point proposal.

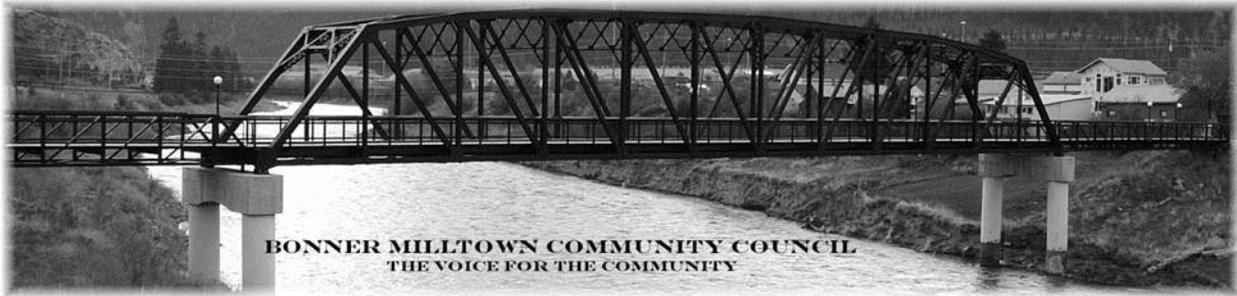
The County position is well expressed in the 17 May 2012 letter from the Air Pollution Control Board to the USACE. The Bonner Milltown Community Council requests that the County attend the scoping hearing and reiterate strong support for the points included in the letter. Of particular importance are these:

1. Include the State of Montana the scope of the EIS
2. Hold public hearings in Montana for the Cherry Point Terminal EIS
3. Evaluate impact on Montana communities of environmental and transportation impacts of increased coal train traffic
4. Quantify and evaluate impacts of burning of exported Montana coal over the expected 30 year life of the Asian power plants upon: a) global air quality; b) climate change caused by increases in atmospheric CO²

Sincerely,

Bonner Milltown Community Council
Gary Matson, Corresponding Secretary

Scoping hearing date, time, place: Tuesday, December 4, 2012, Spokane County Fairgrounds, 404 North Havana Street, Spokane Valley, Washington, 4 p.m. to 7 p.m.



PO Box 376, Milltown MT 59851

June 13, 2016

Missoula County Commissioners
200 W Broadway
Missoula MT 59802

Dear Commissioners:

The Bonner Milltown Community Council (Council) requests that you approve our submitting this letter to the Washington State Department of Ecology as our public comment on the Draft Environmental Impact Statement for the proposed Millenium Bulk Terminals coal export proposal at Longview, Washington.

The Proposed Action would create important adverse impacts in Missoula County. Eight loaded and 8 empty coal trains would pass through the County daily. Forty four million metric tons of coal would be exported annually to markets in Asia where it would be burned in coal-fired power plants.

Climate change.

- “The international scientific community is in agreement that human activities have contributed – and continue to contribute – to climate change. One of the primary causes of climate change is the emission of greenhouse gasses...” (DEIS 5.8-2)
- Greenhouse gas emissions – The Proposed Action would annually generate 3,192,548 metric tons of CO₂ when the coal is burned in Asia (DEIS Sect 5.8)
- Induced impact – The export of this large amount of coal would lower coal price on the international market and stimulate additional coal consumption and additional adverse climate impact (DEIS Sect 5.8)
- Climate change impacts expected in Washington State will be mirrored in other Pacific Northwest states. An example is the “snow water equivalent,” which is forecast to “decline (in Washington State) by almost half (46%) by the 2040s and virtually disappear by the 2080s, greatly reducing streamflow in some areas.” (DEIS Sect 5.8.2.4). Climate change impacts resulting from the increase in greenhouse gasses persist for a long period of time, are considered permanent, and are global in nature.
- The emissions attributed to the Proposed Action would be adverse and significant (DEIS Page 5.8-16)

Rail traffic impacts upon neighboring states were not evaluated in the DEIS

Although the DEIS is thorough and well documented for Washington State, impacts outside the State are not considered. While this omission is inherent in an action that is a fulfillment of Washington State law, it is a serious shortcoming in the DEIS process because it ignores impacts upon neighboring states. Impacts of one’s actions upon neighbors are essential considerations.

The frequency of Rail accidents in Washington State are estimated in the DEIS using historic data. The observed frequency of accidents on BNSF track in the State is 2 accidents per million miles of train travel (DEIS Page 5.2-4). In Montana, approximately 200 miles of MRL track is adjacent to the Clark Fork River. Eight loaded coal trains/day would travel 1600 miles/day along the River. In a year, train travel adjacent to the Clark Fork would add up to 584,000 miles and be accompanied by the likelihood of 1 accident each year. **Impacts of a coal spill** upon the Columbia River were evaluated in the DEIS and expected to have minor consequence upon the River and aquatic life. The Clark Fork has aquatic geological and biological characteristics very different from those of the Columbia. The adverse consequences of a coal spill into this river are unknown, and could be seriously adverse. "...whether the alterations (from coal released into the aquatic environment) are significant enough to be potentially toxic to aquatic organisms depends on many factors, including the type of coal, the relative amount of time the coal is exposed to water, dilution, and buffering."(DEIS Page 4.7-33)

Delays of emergency vehicles at rail crossings outside Washington State were not evaluated. In the area served by the Bonner Milltown Community Council there are four MRL/BNSF rail crossings, two of which have no alternate road to residential areas. Using the 6,844 foot length of a coal unit train traveling at 50mph for calculation, the 16 trains/day (8 loaded, 8 empty) will add a half hour's delay every day to each crossing. Local emergency services have had no opportunity to evaluate potential consequences of this added delay, which would be longer if train speeds are slower.

Health impacts of coal dust were evaluated for Washington State only (DEIS Section 5.7). Of special concern were particles 10 microns and smaller, referred to as PM10 sized particles, and those 2.5 microns and smaller, PM2.5 sized particles. PM10 and PM2.5 particles are small enough to penetrate deep into the lungs and may even enter the bloodstream (EPA, <https://www3.epa.gov/pm/health.html>). Air monitoring equipment operated by Washington State along BNSF main lines detected no exceedances of federal standards.

However, an important shortcoming of the DEIS is the failure to address the long-term health risk over the lifetime of the proposed action (expected to be a minimum 30 year period, DEIS Page 2-11). Clearly, there would be long-term health consequences to residents in the vicinity of rail lines from the liberation of PM10 and PM2.5 particles from 2,920 loaded coal trains traveling each year for 30 years. Evidence that significant particulates are emitted from coal trains is bolstered by the existing need to re-apply surfactant topper agents one additional time during transport from the Powder River origin to the Longview, Washington destination. The extremely small size of PM10 and PM2.5 particles (the human red blood corpuscle is 7 microns in diameter) makes them invisible, broadly dispersible into the human environment, and present as an undefinable and adverse long term impact upon human health.

The Bonner Milltown Community Council strongly recommends the "No Action Alternative" (The Proposed Action to export coal from the Longview Terminals would not take place) because of:

1. The intolerable impact upon climate of increased greenhouse gas emissions resulting from the Proposed Action.
2. The failure of the DEIS to address significant impacts of the Proposed Action upon neighboring states.

Don Felton

Burt Caldwell

Olivia Riutta

Gary Matson

Shelly Cook

Resolution Number 7701

A resolution of the Missoula City Council to request that the U.S. Army Corps of Engineers prepare a comprehensive Programmatic Environmental Impact Statement (PEIS) on the cumulative impacts of new coal export terminals in Washington and Oregon and hold public hearings in Missoula, Montana and other communities that will be significantly impacted from coal that will be transported by train from the Powder River Basin in Montana and Wyoming to terminals along the Pacific Coast.

Whereas, currently, there are four coal-export terminal projects pending before the Corps: the Gateway Pacific Terminals (“GTP”) site at Cherry Point, Washington; the Millennium Bulk Logistics (“MBL”) site at Longview, Washington; the Oregon Gateway Terminal at the Port of Coos Bay, Oregon; and the Coyote Island Terminal site at the Port Morrow, Oregon. Additional permit applications are anticipated for a Kinder Morgan project at the Port of St. Helens, Oregon, and the RailAmerica proposal at the Port of Grays Harbor, Washington. Additionally, existing export terminals at port facilities in British Columbia are already receiving coal shipments and are considering expansions of their own; and

Whereas, taken together, the announced capacity of the planned U.S. projects is approximately 150 million tons of coal per year (compiled by Northern Plains Resource Council through press releases on each proposal). Operating at full capacity, these plans would mean approximately 60 coal trains – each about a mile and half long – moving through the Pacific Northwest, every day, year round. Many of these trains will pass through Missoula, Montana, and will potentially result in a significant adverse effect on our community that should be considered in any environmental review of these proposals.

Whereas, to ensure each individual permitting action accounts for the significant cumulative impacts of and mitigation for multiple proposed northwest coal export terminals, we believe that the Corps of Engineers must first prepare a PEIS that carefully analyzes the combined impacts of multiple, similar coal export terminal proposals.

Whereas, such analysis is allowed for, and most likely required, under the National Environmental Policy Act (NEPA). Under Section 1508.25(a)(1) and (2) of the Council of Environmental Quality's NEPA regulations, this environmental review must collect, analyze, and consider connected and cumulative actions for any federally supported project. Further, “cumulative” and “similar” actions should be discussed within a single environmental impact statement, necessitating the development of a PEIS.

Whereas, The railroad tracks and rail yard cut through a significant portion of the City of Missoula. In particular, the crossing at Greenough and Madison could cut off the Lower Rattlesnake neighborhood from vehicle by pedestrian travel, not to mention emergency services, item trains and increased traffic will result in additional emissions of air pollutants including greenhouse gases.

Whereas, any environmental analysis of these proposals must consider the negative effects that burning the large volumes of coal would have on the climate. Domestic demand for coal in the Powder River Basin has been rapidly declining. As a result, this coal will be shipped overseas to Asia, where it will permanently shape the developing energy markets there. With access to our cheap coal, countries in Asia will be induced to build new coal-fired power plants instead of transitioning to cleaner energy sources. This will lock in reliance on coal as a source of energy for the life of these power plans (thirty plus years), with an astronomically negative effect on climate change.

Now therefore be it resolved that the Missoula City Council requests that environmental reviews of these proposals consider the effects on the City of Missoula and other impacted communities.

Be it further resolved that we urge the U.S. Army Corps of Engineers to conduct a comprehensive programmatic EIS that includes an analysis of all of the indirect and cumulative environmental impacts, including the impacts on Montana communities, from all proposed coal ports in the Pacific Northwest.

Be it further resolved that we request that U.S. Army Corps of Engineers hold a public hearing in Missoula, Montana.

Passed and adopted this 21st day of May, 2012.

Attest:

Approved:

/s/ Martha L. Rehbein
Martha L. Rehbein, CMC
City Clerk

/s/ John Engen
John Engen
Mayor

(Seal)



LEWIS & CLARK CITY-COUNTY
Health Department

316 N Park Ave
Helena, MT 59623
406-447-8351
Fax: 406-447-8398

October 23, 2014

Tom Walsh
Montana Rail Link
101 International Drive
Missoula, MT 59808

Subject: Request for baseline train traffic data

Dear Mr. Walsh:

The Lewis and Clark City-County Board of Health (BOH) are charged with protecting public health within county boundaries. To carry out that charge, the health department administers a variety of programs focusing on environmental health, including an air quality monitoring program. In recent months the BOH has received citizen inquiries about air quality concerns related to rail traffic. In response to these citizen requests, the BOH requests your assistance by providing pertinent information to address our primary public health concerns that include:

- Diesel exhaust from engines, both moving and idling
- Automobile exhaust from cars idling while waiting at train crossing
- Coal dust from trains

In order to address these concerns and their impact on air quality in Lewis and Clark County we require accurate data on the train traffic that is currently passing through the county. This letter is a request to obtain the information directly from Montana Rail Link, rather than rely on third party sources.

We have identified the following information gaps that we believe you can help us with:

- Daily average number of trains that have traversed Lewis and Clark County so far in 2014, and forecasted projections for the next 20 years (in 5 year intervals)
- Daily average number of coal trains (laden and unladen) in 2014
- Average and maximum length of trains in 2014
- Actual time, on average, of blocked access at the Montana Avenue rail crossing per train in 2014
- The speed(s) at which trains pass through Lewis and Clark County;
- Amount of time that trains idle in the rail yard, and within county boundaries, on a daily basis.

This request is only one part of an over-all approach to protecting air quality on a local level.

The mission of the Lewis and Clark City-County Health Department is to improve and protect the health of all Lewis and Clark County residents.

Page 2 - Walsh

We would welcome the opportunity to meet with you and talk in more detail about our local air quality program and our objective to consistently meet EPA ambient air quality standards.

Please send any correspondence to Melanie Reynolds, MPH, Health Officer, Lewis and Clark City-County Health Department, 316 N. Park Ave., Helena, MT 59601 or mreynolds@lccountymt.gov

Sincerely,



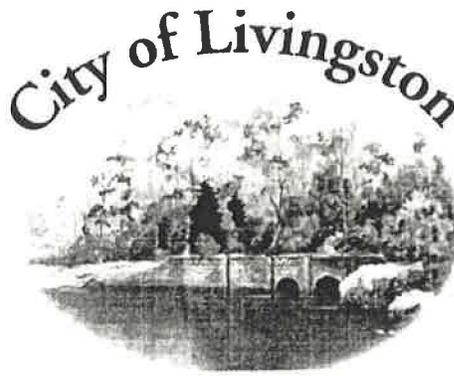
Anne Weber, Chair
Lewis and Clark City-County Board of Health

Cc Lewis and Clark City-County Board of Health
Kathy Moore, Administrator, Environmental Services
Melanie Reynolds, Health Officer, Lewis and Clark County

The mission of the Lewis and Clark City-County Health Department is to improve and protect the health of all Lewis and Clark County residents.

Interim City Manager
Lisa L. Lowy

414 East Callender Street
Livingston, Montana 59047
(406) 222-2005 phone
(406) 222-6823 fax
citymanager@livingstonmontana.org
www.livingstonmontana.org



Chairman
James Bennett

Vice Chairman
Dorel Hoglund

Commissioners
Mel Friedman
Sarah Sandberg
Quentin Schwarz

Millennium Bulk Terminals EIS
c/o ICF International
710 Second Ave, Suite 550
Seattle, WA 98104

Incorporated 1889

RE: Public Response to Millennium Bulk Terminal EIS

To whom it may concern,

This letter is being written in response to the Millennium Bulk Terminal EIS released for Public Comment on April 29, 2016. Upon review of the Draft Document it was noted that the operational and environmental impacts focused primarily on the regional impacts in Washington State and did not adequately address the down rail impacts to other areas, specifically those in Montana. Coal originating out of the Power River Basin Mines will travel the majority of the main rail lines through Montana and specifically through our community in Livingston.

Based on the outline in the EIS, the construction of this terminal and the ensuing increases in rail traffic would essentially double the rail traffic Livingston currently experiences. Our community has several unique characteristics which create extraordinary challenges for an increase of traffic on this magnitude. They are:

1. Our community is bisected by rail lines with only 1 grade separated crossings and two at grade crossings. We already suffer significant bottle necks in the flow of our local traffic due to rail traffic which at times can have all at grade crossings blocked leaving only one alternative route.
2. Additionally, loaded rail cars (especially heavier loads such as coal) require additional pusher engines in order to get over the Bozeman Pass which gains significant elevation upon exiting Livingston. Coupling and uncoupling these additional engines, which all occurs in our downtown railyard, would create further delays that would significantly impact traffic flow as well as impede the ability of emergency services to access the North side of our community. Additional air pollution related to the increased operations and added idling time of the engines presents additional quality of life and environmental impacts to our community.
3. Our community additionally has safety concerns for pedestrian traffic with increases of this magnitude in our community. All of the safe route to schools utilized by our children and families from the North side of our community require the crossing of operating tracks.

It is our hope that as the Public Comment period concludes, sufficient evidence and concern will be raised and acknowledged so that the down rail impacts to Montana and specifically in Livingston as well as an adequate plan to mitigate those impacts can be developed as part of the final EIS for this project. Thank you very much for your consideration of our concerns as it pertains to this EIS and we are available to discuss any of the items further.

Very truly yours,

James Bennett, Chairman
Livingston City Commission

Lisa L. Lowy, MHA
Interim City Manager

LIVINGSTON
Montana
GO BEYOND YELLOWSTONE



City Manager
Edwin R. Meece

(406) 222-2005 phone
(406) 222-6823 fax
citymanager@livingstonmontana.org
www.livingstonmontana.org

Chairman
Steve Caldwell

Vice Chairman
James Bennett

Commissioners
Adam Stern
Mel Friedman
Bill Spanning

Mr. Randel Perry
U.S. Army Corps of Engineers, Seattle District
C/O GPT/BNSF Custer Spur EIS Co-Lead Agencies
1100 112th Avenue Northeast, Suite 400
Bellevue, Washington 98004

Subject: EIS Scoping Comments from Livingston, MT

Dear Mr. Perry,

The City of Livingston, Montana, population 7,500, is bisected by the southern main line of the Montana Rail Link/Burlington Northern Santa Fe railroad companies. The development of ports on Washington's coast will have an impact upon the City of Livingston by increasing train traffic. The City requests that the Army Corps expand its scope of the Environmental Impact Study for said ports to include an analysis of effects to the City of Livingston.

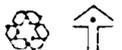
Increasing the number of trains through Livingston will exacerbate three issues currently facing Livingston, including 1. reduced access, 2. additional noise, and 3. potential health concerns from exhaust and coal dust.

- 1. Access.** As the City is bisected by the rail line, three railroad crossings, two at grade, and one underpass serve as access points. These crossings are currently stressed with re-routing and congestion issues. Increased traffic will in turn increase access issues for citizens, businesses and emergency response vehicles.
- 2. Noise.** Many citizens are currently impacted by train and whistle noise due to the central location of the rail line. Residents of Livingston have expressed considerable distress over potential increases in train noise from increased rail traffic.
- 3. Potential Health Hazards.** Potential health hazards, including exhaust from increased idle time from waiting motor vehicles, increased diesel exhaust from the trains themselves, and coal dust from moving trains are a concern for Livingston.

Please consider this request to address the impact of the development of Washington ports and associated increases to rail traffic on the City of Livingston.

Sincerely,

Steve Caldwell
City Commission Chairman



City of Livingston



Incorporated 1889

City Manager
Edwin R. Meece

414 East Callender Street
Livingston, Montana 59047
(406) 222-2005 phone
(406) 222-6823 fax
citymanager@livingstonmontana.org
www.livingstonmontana.org

Chairman
James Bennett

Vice Chairman
Dorel Hoglund

Commissioners
Adam Stern
Mel Friedman
Jon Reddington

December 8, 2014

Mr. Daniel R. Elliott, Chairman
Surface Transportation Board
395 E. Street SW
Washington DC 20423

SUBJECT: Request to include Livingston, Montana, in the review of proposed Tongue River Railroad

Chairman Elliott:

The City of Livingston, Montana, is bisected by the southern main line of the Montana Rail Link/Burlington Northern Santa Fe railroad companies. It has come to our attention that the development of the Tongue River Railroad, which would connect the existing rail line to the proposed Otter Creek coal mine, would have an impact upon the City of Livingston by increasing rail traffic significantly. The City of Livingston requests that the Surface Transportation Board fully analyze the impacts that construction and operation of the Tongue River Railroad would have on the City of Livingston, and that the board consults with the city as the process moves forward.

Increasing the number of trains through Livingston will exacerbate three issues currently facing our community, including reduced access, potential health concerns from diesel exhaust and coal dust, and additional noise:

- **Access.** Because the city is bisected by the rail line, three railroad crossings – two at grade and one underpass – serve as access points from one side of the city to the other. These crossings are currently stressed with re-routing and congestion issues. Increased rail traffic will increase access issues and bottlenecks for emergency response vehicles, citizens, and businesses.
- **Potential Health Hazards.** Potential health hazards, including exhaust from increased idle time from waiting motor vehicles, increased diesel exhaust from trains themselves, and coal dust from moving trains are a concern for Livingston.
- **Noise.** Many citizens are currently impacted by train and whistle noise due to the central location of the rail line. Residents of Livingston have expressed considerable distress over potential increases in train noise from increased rail traffic.

Finally, the City of Livingston lacks adequate funding for infrastructure upgrades to mitigate impacts caused by rail traffic (underpasses, quiet zones, etc.). We believe it is the responsibility of the Surface Transportation Board – as the regulatory agency for the rail system – to ensure that communities and their taxpayers are not forced to bear these costs, including costs to public health and welfare. Costs associated with mitigating impacts of increased train traffic should be divided fairly between the railroad and taxpayers.

Please consider this request to address the impact of the Tongue River Railroad, and associated increased rail traffic, on the City of Livingston.

Respectfully,


James Bennett
Chairman, City Commission

LIVINGSTON
Montana

GO BEYOND YELLOWSTONE



RESOLUTION NUMBER Draft Date 05/28/2014

A resolution of the Missoula City Council to request that the Surface Transportation Board and Montana Department of Environmental Quality and Natural Resources and Conservation hold public hearings in Missoula, during the review of process for the proposed Tongue River Railroad and Otter Creek Mine in Southeast Montana.

Whereas, the City of Missoula, Montana, population 67,000, is bisected by the southern main rail line used by the Montana Rail Link (MRL) and Burlington Northern Santa Fe (BNSF) railroad companies; and

Whereas, this rail line represents the easiest way to transport coal from Southeast Montana to the West Coast; and

Whereas, Arch Coal's proposed Otter Creek Mine in Southeast Montana is designed to supply coal to West Coast coal export terminals; and

Whereas, the proposed Tongue River Railroad, which is jointly owned by Arch Coal, BNSF, and Forrest Mars, Jr. would be the main conduit for transporting coal from Otter Creek to the existing MRL/BNSF line; and

Whereas, building the Otter Creek Mine and Tongue River Railroad would therefore lead to increased coal train traffic through Missoula, contributing to higher levels of air and noise pollution and more frequent traffic delays at the Madison Street at-grade crossing; and

Whereas, these impacts will affect the health and quality of life of Missoula residents; and

Whereas, activities in the Missoula rail yard, where trains refuel, idle, couple, and recouple, exacerbate the effects of air and noise pollution from rail traffic; and

Whereas, the Surface Transportation Board has committed to consider down-line impacts in the Environmental Impact Statement (EIS) for the Tongue River Railroad; and

Whereas, the Otter Creek Tracts contain an estimated 1.3 billion tons of coal, which if burned would result in adding approximately 2.5 billion tons of carbon dioxide to the atmosphere; and

Whereas, the effects of climate change from the burning of fossil fuels are felt in Missoula as well as in other Montana communities;

Now therefore be it resolved by the Missoula City Council that building the Tongue River Railroad and Otter Creek Mine would affect the health and well-being of Missoula residents, and that Missoula stands to be impacted even more severely than many other rail towns, because of the existence of the Missoula rail yard;

Be it further resolved that the Missoula City Council expects the Surface Transportation Board to actively seek input from the Council and Missoula residents for inclusion in the draft EIS for the Tongue River Railroad;

Be it further resolved that the Missoula City Council requests that the federal Surface Transportation Board and state Department of Environmental Quality and Natural Resources and Conservation hold public hearings in Missoula, during the public comment periods on the draft Environmental Impact Statements for the Tongue River Railroad and Otter Creek Mine, respectively.

PASSED AND ADOPTED this ____ day of _____, 2014

ATTEST:

APPROVED:

Martha L. Rehbein, CMC
City Clerk

John Engen
Mayor

(SEAL)

**Draft dated 5/16/2012
Resolution**

A resolution of the Missoula City Council to request that the U.S. Army Corps of Engineers prepare a comprehensive Programmatic Environmental Impact Statement (PEIS) on the cumulative impacts of new coal export terminals in Washington and Oregon and hold public hearings in Missoula, Montana and other communities that will be significantly impacted from coal that will be transported by train from the Powder River Basin in Montana and Wyoming to terminals along the Pacific Coast.

Whereas, currently, there are four coal-export terminal projects pending before the Corps: the Gateway Pacific Terminals (“GTP”) site at Cherry Point, Washington; the Millennium Bulk Logistics (“MBL”) site at Longview, Washington; the Oregon Gateway Terminal at the Port of Coos Bay, Oregon; and the Coyote Island Terminal site at the Port Morrow, Oregon. Additional permit applications are anticipated for a Kinder Morgan project at the Port of St. Helens, Oregon, and the RailAmerica proposal at the Port of Grays Harbor, Washington. Additionally, existing export terminals at port facilities in British Columbia are already receiving coal shipments and are considering expansions of their own; and

Whereas, taken together, the announced capacity of the planned U.S. projects is approximately 150 million tons of coal per year. Operating at full capacity, these plans would mean approximately 60 coal trains - each about a mile and half long - moving through the Pacific Northwest, every day, year round. These trains will pass through Missoula, Montana, and will potentially result in a significant adverse effect on our community that should be considered in any environmental review of these proposals.

Whereas, to ensure each individual permitting action accounts for the significant cumulative impacts of multiple proposed northwest coal export terminals, we believe that the Corps of Engineers must first prepare a PEIS that carefully analyzes the combined impacts of multiple, similar coal export terminal proposals.

Whereas, such analysis is allowed for, and most likely required, under the National Environmental Policy Act (NEPA). Under Section 1508.25(a)(1) and (2) of the Council of Environmental Quality's NEPA regulations, this environmental review must collect, analyze, and consider connected and cumulative actions for any federally supported project. Further, “cumulative” and “similar” actions should be discussed within a single environmental impact statement, necessitating the development of a PEIS.

Whereas, the railroad tracks and rail yard in Missoula cut through a significant portion of town. The crossing at Greenough Drive, in particular, cuts off the Lower Rattlesnake neighborhood. The increased train traffic will cause much more frequent delays there and will result in significant additional noise pollution as well as emissions of air pollutants, including greenhouse gases, from numerous cars switching and idling for additional hours per day. In addition, increased diesel exhaust and impacts from coal dust emissions should also be thoroughly analyzed.

Whereas, any environmental analysis of these proposals must consider the negative effects that burning the large volumes of coal would have on the climate. Domestic demand for coal in the Powder River Basin has been rapidly declining. As a result, this coal will be shipped overseas to Asia, where it will permanently shape the developing energy markets there. With access to our cheap coal, countries in Asia will be induced to build new coal-fired power plants instead of transitioning to cleaner energy sources. This will lock in reliance on coal as a source of energy for the life of these power plans (thirty plus years), with an astronomically negative effect on climate change.

Now therefore be it resolved that the Missoula City Council requests that environmental reviews of these proposals consider the effects on the City of Missoula and other impacted communities.

Be it further resolved that we urge you to conduct a comprehensive programmatic EIS that includes an analysis of all of the indirect and cumulative environmental impacts, including the impacts on Montana communities, from all proposed coal ports in the Pacific Northwest.

Be it further resolved that we request that you hold a public hearing in Missoula, Montana.

Passed and adopted this ___ day of May, 2012.

Attest:

Approved:

Martha L. Rehbein, CMC
City Clerk

John Engen
Mayor

(Seal)