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SERVICE DATE - DECEMBER 14, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33407

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION  
CONSTRUCTION INTO THE POWDER RIVER BASIN

Decided: December 13, 2000

On September 27, 2000, the Draft Environmental Impact Statement (EIS) was issued in this proceeding. The Draft EIS provided a 90-day period (to and including January 5, 2001) for interested parties to submit comments.

The Board's Section of Environmental Analysis (SEA) and the cooperating agencies<sup>1</sup> have received requests from a wide variety of groups and individuals, including several public officials and the U.S. Environmental Protection Agency, to extend the January 5, 2001 comment due date. The majority of the requests ask for a 90-day extension, generally citing the length of the Draft EIS and the scope and complexity of the proposal. While a few commenters argue that no extension is necessary, others have asked for as much as a 6-month or 1-year extension of time.

DISCUSSION AND CONCLUSIONS

In establishing a 90-day comment period – which is twice as long as the minimum set forth in the Council on Environmental Quality's Guidelines (40 CFR 1506.10) – SEA believed that all interested parties would have sufficient time to review and comment on the Draft EIS. However, during the same time the public is reviewing and preparing comments on the Draft EIS, SEA and the cooperating agencies are also seeking public comment on the other documents contained in it (U.S. Forest Service Forest Plan Amendments, the Programmatic Agreement and Identification Plan, the Memorandum of Agreement, and the Biological Assessment). In addition, the comment period is running on Dakota, Minnesota & Eastern Railroad's (DM&E's) two permit applications to the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (Section 404 permit applications). Many of the requests for additional time stated that it has been difficult to review simultaneously all of these documents. Moreover, at the recent public meetings on the Draft EIS, including the Native American Tribal meeting on the Rosebud Sioux Reservation, a number of participants

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<sup>1</sup> U.S. Department of Agriculture, Forest Service; the U.S. Department of the Interior, Bureau of Land Management; the U.S. Army Corps of Engineers; the U.S. Department of the Interior, Bureau of Reclamation; and the U.S. Coast Guard.

argued that environmental justice communities could participate more effectively with more time to file comments.

It is important to move the environmental review process in this and every case forward without undue delay. But those requesting an extension here have made a strong case that more time is needed to provide an adequate opportunity for meaningful review and comment by the public, including environmental justice communities, on the Draft EIS and the other related documents in this particularly complex case. In these circumstances, the comment period will be extended for an additional 60 days, or until March 6, 2001. The extension will apply to the Draft EIS itself, the documents appended to it (the Forest Plan Amendments, the Programmatic Agreement and Identification Plan, the Memorandum of Agreement, and the Biological Assessment), and the Section 404 permit applications.<sup>2</sup> Comments on all of these documents must be postmarked by March 6, 2001. In order to issue the Final EIS in a timely manner, no further extensions will be granted absent compelling, unforeseen circumstances.

We note that, at the recent public meetings conducted to hear comments on the Draft EIS, a number of participants contended that additional mitigation measures are needed to adequately protect residents of the communities potentially impacted by DM&E's proposal. The extended comment period will provide an opportunity for DM&E and the affected communities to explore mutually acceptable ways to reduce potential impacts on communities, and to submit any agreements that are reached to the Board. The Board encourages railroads and communities to negotiate private solutions addressing specific local environmental concerns because these agreements are generally more effective, and in some cases, more far-reaching than environmental mitigation options we could impose unilaterally. In the absence of negotiated agreements submitted to the Board,<sup>3</sup> SEA, in preparing the Final EIS, will give careful consideration to what measures it should recommend for mitigating adverse impacts to community residents if, following the completion of environmental review, we give final approval to this project.

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<sup>2</sup> The U.S. Army Corps of Engineers has notified SEA that it will issue a decision extending the comment period on DM&E's Section 404 permit applications to the U.S. Army Corps of Engineers to March 6, 2001, to coincide with the due date for comments on the Draft EIS and associated documents.

<sup>3</sup> Our practice is to impose as a condition to our decisions approving railroad transactions a requirement that the railroad comply with the terms of all negotiated agreements developed with states, local communities, and other entities regarding environmental issues. These agreements substitute for specific local mitigation for a community that otherwise would be imposed. However, we cannot impose conditions based on negotiated agreements without knowing the terms of those agreements.

## HOW TO SUBMIT COMMENTS

Comments on the Draft EIS must be postmarked by March 6, 2001, and mailed to the address below. For comment letters over 5 pages, please mail a signed original plus 10 copies. For comment letters 5 pages or less, a signed original is sufficient. Comments must be mailed to:

Office of the Secretary  
Case Control Unit  
STB Finance Docket No. 33407  
Surface Transportation Board  
1925 K Street, NW  
Washington, DC 20423-0001

Please write the following in the lower left hand corner of the envelope:

Attention: Victoria Rutson  
Environmental Project Director  
Environmental Filing

Comments on the Forest Plan Amendments should be filed directly with the U.S. Forest Service. Please send written comments on the Forest Plan Amendments to Wendy Schmitzer, USFS Project Coordinator, Douglas Ranger District, 2250 East Richards Street, Douglas, WY 82633, or call (307) 358-1634. You may email comments on the Forest Plan Amendments to: [wschmitzer@fs.fed.us](mailto:wschmitzer@fs.fed.us).

Comments on the U.S. Army Corps of Engineers permitting requirements, specifically on DM&E's Section 404 permit applications, should be filed directly with the appropriate Corps of Engineers district office. Please send comments on the Section 404 permit application relating to Minnesota to Mr. Timothy Fell, U.S. Army Corps of Engineers, St. Paul District, 190 5th Street East, St. Paul, MN 55101-1638. Please send comments on the Section 404 permit application relating to South Dakota and Wyoming to Mr. Jerry Folkers, U.S. Army Corps of Engineers, Omaha District, 215 North 17th Street, Omaha, NE 68102-4978.

When submitting comments, please be as specific as possible and substantiate your concerns and recommendations.

It is ordered:

The due date for submitting comments on the Draft Environmental Impact Statement, and the documents appended to it (the Forest Plan Amendments, the Programmatic Agreement and Identification Plan, the Memorandum of Agreement, and the Biological Assessment) is extended to March 6, 2001.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams  
Secretary