

## CHAPTER 1.0 - INTRODUCTION

### 1.1 OVERVIEW

As discussed in more detail below, in Mid States Coalition for Progress v. STB, 345 F.3d 520 (8<sup>th</sup> Cir. 2003) (Mid States), the court vacated and partially remanded the Board's decision in this rail construction case (see Mid States attached at Appendix A).<sup>1</sup> This Draft Supplemental Environmental Impact Statement (Draft SEIS) addresses the four environmental issues remanded by the court of appeals. The Draft SEIS was prepared by the Surface Transportation Board's (Board or STB) Section of Environmental Analysis (SEA), in conjunction with five federal cooperating agencies including the United States Department of Agriculture's Forest Service (USFS), the United States Department of Interior's Bureaus of Land Management (BLM) and Reclamation (Reclamation), the United States Army Corps of Engineers (COE), and the Coast Guard. Further references to the work of SEA and the Board in this document encompass the efforts of the cooperating agencies.

SEA welcomes written comments from agencies, interested parties, and members of the general public on all aspects of this Draft SEIS. Comments should be submitted within 45 days of the issuance of this Draft SEIS. After the receipt of comments, SEA will issue a Final Supplemental Environmental Impact Statement (Final SEIS), addressing the comments. The Board then will issue a final decision addressing the results of the supplemental environmental analysis and determining whether to again approve this rail construction project.

---

<sup>1</sup> The reader should note that references to specific page numbers in Mid States, the Board's 1998 Decision and 2002 Decision, and EIA report refer to the page numbers of the individual document cited, not the page of the Appendix.

## 1.2 BACKGROUND

### 1.2.1 The Board Proceeding.

In February 1998, the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) sought authority from the Board<sup>2</sup> under 49 U.S.C. 10901<sup>3</sup> to construct and operate an approximately 280-mile rail line extension to reach certain coal mines in Wyoming's Powder River Basin (PRB). The proposed line would allow DM&E to become the third rail carrier to transport low-sulfur coal from the PRB and in so doing generate the funds needed to completely upgrade DM&E's existing 598-mile rail system in South Dakota and Minnesota. In December 1998, the Board issued a decision addressing the transportation-related aspects of DM&E's proposal (1998 Decision) (copy attached at Appendix B). In it, the Board found that the new line, if built, would provide transportation benefits by enabling DM&E to compete with the Union Pacific Railroad Company (UP) and the BNSF Railway Company (BNSF) in the PRB.

---

<sup>2</sup> The Board is a decisionally independent adjudicatory body, organizationally housed within the U.S. Department of Transportation. The Board has jurisdiction over certain transportation matters, including those related to the construction of new rail lines, rail mergers, the abandonment of rail service, and railroad rates.

<sup>3</sup> Under 49 U.S.C. 10901, the Board has exclusive licensing authority for the construction and operation of rail lines. In enacting the ICC Termination Act of 1995, Congress intended to facilitate rail construction. Congress did so by changing the statutory standard from requiring approval if the agency finds that a project is consistent with the public convenience and necessity to requiring approval unless the Board finds that such activities are inconsistent with the public convenience and necessity.

In reviewing rail construction proposals, the Board's well settled practice is to examine whether there is a public demand or need for the proposed new service, whether the proposal is in the public interest and will not unduly harm existing services, and whether the applicant is financially able to undertake the construction and provide service. The Board can either (1) approve the transaction as proposed, without conditions, (2) approve the transaction with conditions to offset or reduce the potential impacts, including environmental impacts or (3) disapprove the transaction entirely.

Then, to comply with the National Environmental Policy Act, 42 U.S.C. 4321 et seq. (NEPA) and other relevant environmental laws and regulations,<sup>4</sup> SEA prepared a thorough and comprehensive Environmental Impact Statement (EIS)<sup>5</sup>—which is available in its entirety on the Board’s website at [www.std.dot.gov](http://www.std.dot.gov) and which SEA incorporates here by reference—as part of an environmental review process that took nearly 4 years to complete. The EIS was prepared in conjunction with five federal cooperating agencies, and in consultation with a number of other agencies, including the U.S. Environmental Protection Agency (EPA). SEA does not intend to revisit or reconsider the comprehensive environmental analyses and conclusions in the EIS. The limited purpose of this Draft SEIS is to supplement the EIS with additional environmental analysis on the four remanded issues, consistent with the decision of the court of appeals in Mid States.

As discussed in more detail in the EIS, throughout the environmental review process, SEA sought input from agencies, elected officials, organizations, businesses, communities, farmers, ranchers, and other members of the public. SEA also undertook extensive public outreach activities to give interested parties, agencies, Tribes, and the general public the opportunity to learn about the project, define issues, and actively participate in the environmental review process. An approximately 5,000-page Draft EIS was issued for public review and comment in September 2000. An approximately 2,500-page Final EIS, issued in November

---

<sup>4</sup> NEPA requires federal agencies to examine the environmental effects of proposed federal actions, such as proposals to construct a new rail line. NEPA prescribes the process that must be followed but does not mandate particular results. Department of Transportation v. Public Citizen, 124 S. Ct. 2204, 2209 (2004). Once the adverse environmental effects have been adequately identified and evaluated, the agency may conclude that other values outweigh the environmental cost. City of Auburn v. United States, 154 F.3d 1025, 1032-33 (9<sup>th</sup> Cir. 1988).

Regulations governing how NEPA is implemented have been promulgated by the President’s Council on Environmental Quality (CEQ) at 40 CFR 1500-1508, and by the Board, at 49 CFR 1105.

<sup>5</sup> An EIS is the detailed written statement required by NEPA for “major federal actions significantly affecting the quality of the human environment,” 42 U.S.C. 4332(2)(C). See 40 CFR 1508.11 (CEQ rule), and 49 CFR 1105.4(f) (STB rule).

2001, contained further analysis in response to the roughly 8,600 written comments received. In addition to accepting written comments on the Draft EIS, SEA hosted 12 public meetings that were attended by more than 1,700 persons.

The issues analyzed in the EIS included the impacts—both beneficial and adverse—of the railroad’s proposal on human and natural resources, including safety, transportation, geology, soils, land use, paleontological resources, water resources, wetlands, air quality, noise, vibration, vegetation, wildlife, Federally-listed threatened and endangered species, cultural resources, aesthetics, socioeconomics, and minority and low income populations. The in-depth environmental review included environmental studies and analyses such as biological surveys; cultural resource investigations of archaeological sites and historic resources; and the compilation of data and study of potential effects on safety (including grade-crossing safety and potential delays), wildlife migration, geological resources and soils, and potential impacts to Native American Tribes, ranches, farms, and communities. The environmental analysis looked not only at the environmental impacts of the new construction (which required Board approval under 49 U.S.C. 10901) but also looked at the “downstream” environmental impacts of upgrading and running more trains over DM&E’s existing lines in Minnesota and South Dakota—activities that do not require Board approval.<sup>6</sup>

In January 2002, the Board issued a decision (2002 Decision) (copy attached at Appendix C) approving the proposed line (Figure 1-1). Based on the environmental information amassed in the EIS, the Board concluded that DM&E’s proposal would result in some potentially significant adverse environmental impacts, but that, with SEA’s recommended environmental

---

<sup>6</sup> See Lee’s Summit, Mo. v. STB, 231 F.3d 39, 42-43 n.3 (D.C. Cir. 2000) (Lee’s Summit) (railroads have the right to improve their existing lines without needing to obtain Board approval, and thus without an environmental review under NEPA).

conditions, the impacts would not be severe enough to warrant disapproving the proposed new line in view of the line's significant transportation and public benefits: (1) the introduction of a competitive route from the PRB that would be as much as 390 miles shorter than the other carriers' routes to the areas served by DM&E and (2) the attendant upgrade of DM&E's existing system, enabling improved service to DM&E's existing customers. Accordingly, the Board granted its approval for the line, subject to extensive environmental conditions (147 conditions in all) addressing both short-term (construction-related) impacts, and impacts related to long-term operation of unit coal trains.<sup>7</sup>

As part of its mitigation, the Board imposed mitigation requiring two grade-separated crossings along the existing line in Rochester, Minnesota—the largest community on DM&E's route and the location of the Mayo Clinic, one of the nation's most sophisticated medical centers—as well as extensive grade-crossing improvements in numerous other locations. Noise mitigation for Rochester and other communities was imposed, as well as mitigation to address water quality, wetlands, fencing, the establishment of community and Tribal liaisons, and biological and cultural resource concerns. The Board also imposed a requirement that DM&E use the environmentally preferable routes, and provided for a formal environmental oversight period to allow it to monitor DM&E's progress in implementing the environmental conditions and resolve any unanticipated environmental problems that might arise during implementation of this major construction project.

Finally, in the course of the environmental review, DM&E submitted negotiated agreements that it had executed with 51 of the 56 affected communities on its existing lines, setting forth mutually satisfactory measures for addressing potential environmental impacts on

---

<sup>7</sup> A full list of the conditions imposed by the Board can be found at Appendix C, p. 22.

those communities and other local concerns. The Board imposed conditions requiring DM&E to comply with these voluntary agreements.

### **1.2.2 Cooperating Agency Proceedings**

The Draft SEIS was prepared by SEA, in cooperation with the USFS, BLM, COE, Reclamation, and Coast Guard. Under the requirements of NEPA, the Board is the lead agency for preparing the Draft SEIS, and USFS, BLM, COE, Reclamation, and the Coast Guard are cooperating agencies. This Draft SEIS has been prepared in compliance with NEPA and related environmental laws, Board regulations for implementing NEPA (49 CFR Part 1105), the guidance provided by the CEQ regulations implementing NEPA (40 CFR Part 1500), as well as USFS, BLM, COE, Reclamation, and Coast Guard policy, procedures, and guidance documents.

The Federal agencies' actions considered in this case will include decisions by the Board and each of the cooperating agencies. The cooperating agencies' decision making authority, and the status of the various applications either submitted or to be submitted by DM&E to these agencies, was discussed in detail in the Final EIS.<sup>8</sup>

### **1.2.3 Proceedings in Court.**

On judicial review, various petitioners<sup>9</sup> representing a variety of interests challenged the Board's decision to approve the line on multiple grounds. Some argued that the Board should have disapproved the project as not financially viable. Others raised issues about the effect of the project on environmental and historic resources and Tribal interests. Some focused on the

---

<sup>8</sup> See Final EIS, Executive Summary, pages E-15 to E-20.

<sup>9</sup> Petitioners included the Mid States Coalition for Progress; Minnesotans for an Energy Efficient Economy; Michael LaPlant; the Sioux Nation; the Sierra Club; the City of Rochester, Minnesota; Olmsted County, Minnesota; and the Mayo Foundation.

Board’s consideration of alternatives and the technical analysis of noise and air quality in the EIS. There were also allegations that the Board had not adequately addressed potential increased coal consumption; public security issues; sidings; and “environmental justice” (minority and low-income populations).

In Mid States (copy attached at Appendix A), the court vacated and partially remanded the 2002 Decision. The court upheld the Board’s decision with respect to all of the transportation issues and most of the environmental issues that had been raised.<sup>10</sup> For example, the court rejected challenges to the Board’s methodology for assessing noise,<sup>11</sup> the potential air quality impacts of the construction and operation of DM&E trains,<sup>12</sup> environmental justice,<sup>13</sup> sidings,<sup>14</sup> and the traffic effects that would result from reconstruction of the existing line through Rochester.<sup>15</sup> The court disagreed with claims that SEA failed to take a hard look at the possibility of groundwater contamination and the risk that the project would cause delays to emergency vehicles.<sup>16</sup> Furthermore, it rejected the Sioux Nation’s argument that licensing of this rail line would violate the terms of Native American treaties or breach the government’s

---

<sup>10</sup> While the court was satisfied that “the Board had sufficient evidence before it to conclude that DM&E could complete this project,” 345 F.3d at 552, it did caution the Board to take into account “additional costs, if any, that may arise from the environmental analyses that it will conduct on remand” and to “incorporate its new findings appropriately into the body of evidence that it has already amassed before making a final determination on this matter.” Id.

<sup>11</sup> Id. at 534-38.

<sup>12</sup> Id. at 540-41.

<sup>13</sup> Id. at 541.

<sup>14</sup> Id. at 538.

<sup>15</sup> Id. at 538-39, 540.

<sup>16</sup> Id. at 539-540.

fiduciary duty to the Sioux.<sup>17</sup> The court also upheld the Board's rejection of the bypass proposed in Rochester as an alternative to DM&E's plans to rehabilitate its existing line in Rochester,<sup>18</sup> and it was satisfied with the Board's consideration of alternatives for the proposed rail line extension.<sup>19</sup>

Notwithstanding its conclusion that "*on the whole the Board did a highly commendable and professional job in evaluating an enormously complex proposal,*"<sup>20</sup> the court remanded the case for further Board review of four environmental issues. First, although the court specifically upheld the EIS's noise methodology (including development of a noise model, determination of noise contours for wayside, horn, and the combination of wayside and horn noise, the use of the 65 and 70-dBA L<sub>dn</sub> noise levels for analysis and, the use of aerial photographs to count noise-sensitive receptors within the established noise contours),<sup>21</sup> the court stated that the Board needed to do more to explain its decision that mitigation for increased horn noise as a result of this project was unwarranted.<sup>22</sup> Second, although the EIS had included analyses for noise and vibration separately, the court directed the Board to address in more detail the City of Rochester's contention "that households experiencing both noise and vibration perceive the effect of the noise to be approximately twice the measured value of the noise."<sup>23</sup>

---

<sup>17</sup> *Id.* at 555-56.

<sup>18</sup> *Id.* at 542-43.

<sup>19</sup> *Id.* at 545-48.

<sup>20</sup> *Id.* at 556.

<sup>21</sup> *Id.* at 534-538.

<sup>22</sup> *Id.* at 536.

<sup>23</sup> *Id.* at 537.

Third, the court directed the Board to examine the potential indirect air quality impacts of increased coal consumption that might result from lower transportation rates.<sup>24</sup> The EIS had acknowledged that the Clean Air Act's requirements would encourage many utilities to shift to western, low-sulfur coal that the new line would carry, but had reasoned that such a shift would occur with or without the new line, since two other carriers already transport low-sulfur coal out of Wyoming and the proposed project would merely provide a shorter and straighter route. The court found this reasoning unpersuasive.<sup>25</sup> The court also rejected the argument that the potential air impacts of burning low-sulfur coal were too speculative and far removed from the Board's approval of construction and operation of this rail line for the Board to be required to consider them in its NEPA analysis in this case.<sup>26</sup> The court noted that the EIS scoping notice in this case had stated that the Board would "[e]valuate the potential air quality impacts associated with the increased availability and utilization of Powder River Basin coal."<sup>27</sup> It also faulted the EIS for failure to address three computer simulation models identified by some commenters (PROSYM, PROMOD, and GE-MAPS) that allegedly could be used to forecast the effects of the DM&E project on the national consumption of coal.<sup>28</sup>

Finally, the court ruled that the Board's authorization to construct this line had been premature under Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, because the "Programmatic Agreement" governing the historic preservation process had not yet been

---

<sup>24</sup> Id. at 548-50.

<sup>25</sup> Id. at 549.

<sup>26</sup> Id.

<sup>27</sup> Id. at 550.

<sup>28</sup> Id.

executed.<sup>29</sup> (That agreement has since been executed and is included at Appendix D.) In closing, the court expressed its expectation that the Board could deal with the four remanded issues expeditiously:<sup>30</sup>

*In both size and scope, this project is undoubtedly one of the largest ever to have come before the Board. Although we find it necessary to vacate the Board's final decision so that it may correct certain deficiencies, we think that on the whole the Board did a highly commendable and professional job in evaluating an enormously complex proposal. We are confident that on remand the Board will quickly address those few matters that we have identified as requiring a second look, and will come to a well informed and reasonable conclusion.*

Petitions for rehearing of the court's decision were filed by the Board and various other parties. All of the petitions for rehearing were denied on January 30, 2004.

### **1.3 THE SUPPLEMENTAL EIS PROCESS**

On March 3, 2004, the Board issued a notice (copy attached at Appendix E) that it had begun work on the four remanded environmental issues, consistent with the court's Mid States decision. Pursuant to the court's remand, SEA has conducted an independent review of each of the remanded issues and presents its analysis and conclusions on each issue for public review and comment in this Draft SEIS.

#### **1.3.1 Scoping.**

Following the issuance of the Board's notice, SEA received comments requesting that it initiate a scoping process for the Supplemental EIS.<sup>31</sup> However, the CEQ regulations

---

<sup>29</sup> Id. at 553-55.

<sup>30</sup> Id. at 556.

<sup>31</sup> The court in Mid States expressed no concerns about the scoping process that was conducted in preparing the EIS in this case.

implementing NEPA do not require scoping for a supplement.<sup>32</sup> Moreover, the court's remand in this case was narrow, and the court expected that on remand the Board "*will quickly address those few matters that we have identified as requiring a second look, and will come to a well informed and reasonable conclusion.*"<sup>33</sup>

The Board has complied with the court's remand as faithfully, fairly and expeditiously as possible in preparing this Draft SEIS setting forth SEA's analysis and conclusions on the four remanded issues for public review and comment. Following the comment period on this Draft SEIS, a Final SEIS will be prepared addressing any comments raised in response to the Draft SEIS. Thus, as part of the process, there will be ample opportunity for public review and comment on all aspects of the supplemental analysis, including the methods and assumptions that have been used.

### **1.3.2 Contents and Organization of the Draft SEIS.**

Chapter 2 of the Draft SEIS discusses the remanded horn noise issue. Section 1 explains that the analysis on remand has encompassed the entire line (not just the City of Rochester), and describes the methodology that went into the development of the horn noise contour for the entire line in the EIS, including a discussion of the difference between wayside and horn noise and the use of  $L_{dn}$  to quantify horn noise. Section 2 summarizes the results of the noise analysis presented in the EIS and assesses whether the information is still correct, identifying the number of noise sensitive receptors affected by wayside verses horn noise along the entire route (*i.e.*, both DM&E's proposed new line and its existing lines). Section 3 summarizes the noise mitigation previously imposed by the Board. Finally, in Section 4, SEA explains the differing

---

<sup>32</sup> See 40 CFR 1502.9(c)(4) ("Agencies shall prepare, circulate, and file a supplement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council").

<sup>33</sup> 345 F.3d at 556.

treatment of wayside and horn noise relative to mitigation, discusses the Federal Railroad Administration's (FRA's) recent rule concerning horn soundings, and then considers whether mitigation for horn noise not involving limitations on the use of horns is warranted in this case.

Chapter 3 addresses the combined impact, or synergies, between vibration and noise in order to more fully respond to concerns raised in the City of Rochester's comments on the Draft EIS that households experiencing both noise and vibration perceive the effect of the noise to be approximately twice the measured value of the noise. Section 1 makes clear that the analysis on remand encompasses the entire line and presents background information on receptors being exposed to both vibration and noise due to passing trains. Section 2 summarizes the results presented in the EIS on noise and vibration for the entire line, including the number of receptors exposed to adverse levels of vibration and noise. Section 3 discusses the synergies of being exposed to both noise and vibration, and Section 4 presents the potential impacts of the proposed project as a result of the synergistic effects of noise and vibration, and considers whether additional mitigation is warranted.

Chapter 4 examines the potential indirect air quality impacts of increased coal consumption that might result from lower transportation rates as a result of this project. The chapter evaluates what computer simulation models exist that could be used for this analysis, explains why the Energy Information Administration's (EIA) National Energy Modeling System (NEMS) model was selected, the methods and assumptions provided to EIA by SEA for use in running the model, pursuant to SEA's direction, and discusses the results obtained. Copies of correspondence between SEA and EIA are included at Appendix F and EIA's report on the analysis conducted for SEA is included at Appendix G.

Finally, Chapter 5 explains that the Board has met its obligations under the National Historic Preservation Act in this matter because, although a Programmatic Agreement governing the historic preservation process was not executed at the time of the issuance of the 2002 Decision, one is now in place.

## **1.4 SUMMARY OF CONCLUSIONS**

As part of this Draft SEIS, SEA has conducted additional analysis related to the court's four remanded issues: horn noise mitigation, noise and vibration synergies, air quality related to increased availability and utilization of PRB coal, and the Programmatic Agreement. Each of these issues are discussed more fully in the applicable chapters of this Draft SEIS, as noted above. The following provides a brief summary of SEA's conclusions for each of these issues.

### **1.4.1 Horn Noise**

In the EIS, SEA determined that thousands of noise sensitive receptors could be exposed to adverse levels of noise due to train horn soundings. SEA recommended 11 mitigation measures to address potential noise impacts, including measures that will have the effect of reducing horn soundings (i.e., grade crossing improvements, including grade separated crossings in Rochester, Minnesota and Pierre, South Dakota). All of these mitigation conditions were imposed by the Board. However, following its additional analysis for this Draft SEIS and consistent with past cases, SEA continues to believe that additional mitigation for horn noise soundings, including mitigation such as insulation treatments, at the noise receptor locations, or sound walls, is not reasonable or warranted. This decision is based on the following:

- train horn soundings are a safety issue regulated by FRA
- FRA's Interim Rule establishing train horn sounding regulations and procedures to establish quiet zones now provides all of the communities affected by this

project the opportunity to eliminate or reduce train horn soundings without compromising safety through community and railroad cooperation

- numerous agreements negotiated between communities along the existing rail line and DM&E address the concerns of the local communities along the new and existing line, including noise
- the Board has never imposed mitigation for horn (as opposed to wayside) noise, and
- the number of potential receptors, requiring DM&E to mitigate the thousands of sensitive noise receptors potentially affected by horn noise by means such as insulation or sound barriers, would be very costly
- sound barriers would also create potential safety hazards and might not be effective.

Therefore, SEA does not recommend any additional noise mitigation to address adverse impacts from train horn soundings beyond those already recommended and imposed.

#### **1.4.2 Noise and Vibration Synergies**

SEA concluded in the EIS that the proposed project would have potentially significant impacts to noise sensitive receptors due to increases in noise from greater numbers of passing trains and locomotive horn soundings. Additionally, SEA concluded that the proposed project would not have significant effects on noise sensitive receptors due to increased vibration as projected vibration levels would be insufficient to cause damage to nearby structures. Following its additional investigation and analysis, SEA finds no evidence to conclude that, at the levels of vibration anticipated from the proposed project, any increase in the annoyance from or perception of noise would occur. As such, SEA finds no reason to modify its prior noise and

vibration conclusions, or include mitigation measures beyond those previously recommended and imposed to address these issues.

### **1.4.3 Air Quality**

SEA conducted, in response to the court's remand, an extensive investigation of the potential impacts of the proposed project on the potential increase in coal use and associated air quality impacts. After carefully assessing existing computer models, SEA selected the Department of Energy, Energy Information Administration's "NEMS" model (National Energy Modeling System) as the model that would most appropriately assess whether the DM&E's PRB Expansion Project would increase the long-term demand for coal and any subsequent effects on air quality. SEA then requested that EIA conduct a number of sensitivity runs of the NEMS model to better assess the potential air quality impacts associated with the proposed project.

In evaluating EIA's NEMS modeling, SEA determined that:

- little additional coal would be produced nationally if the DM&E PRB Expansion Project were built
- on a national and regional level, projected air emissions for sulfur dioxide, nitrogen oxides, carbon dioxide, and mercury associated with the small increase of additional coal would be less than 1 percent
- on a national and regional level, projected the air emissions for carbon monoxide and particulate matter would also be small – less than 1 percent.
- local air emissions impacts are unknown due to lack of specific information on where the additional coal would be burned.

Because of the minor increases in coal production and air emissions, SEA did not recommend additional air quality mitigation beyond that previously imposed by the Board.

#### **1.4.4 Programmatic Agreement Governing Historic Review**

SEA has developed and executed a Programmatic Agreement for the proposed project. This agreement is included at Appendix D of this Draft SEIS.

#### **1.5 DISTRIBUTION AND AVAILABILITY OF THE DRAFT SEIS**

The Draft SEIS has been mailed to key reviewing agencies, Tribes, Governors, elected officials, the parties of record, and other interested citizens. Prior to release of the Draft SEIS, SEA sent over 4,600 postcards to federal, state, and local agencies, Tribes, elected officials, and citizens included on the Parties of Record, Service, and Environmental participants lists for this project. The postcards indicated the upcoming release of the Draft SEIS and requested that recipients return the postcard to SEA if they desired a copy of the document. Updated name and address information were also requested. Nearly 1,000 copies of the Draft SEIS have been mailed as a result of postcards returned to SEA. Additionally, the Draft SEIS is available to all interested persons for review in the reference section of over 80 public libraries, as listed in Appendix G. The entire document is also available on the Board's website (<http://www.stb.dot.gov>), under "E-Library", then "Decisions & Notices," and listed as "Environmental Review" by Service Date (April 15, 2005), Docket Number (FD 33407), Docket Prefix (FD) or Decision ID No. 35730.

#### **1.6 OPPORTUNITY FOR PUBLIC REVIEW AND COMMENT**

The public and any interested parties are encouraged to make written comments on all aspects of the Draft SEIS. However, only comments on the four remanded issues addressed in the Draft SEIS will be considered, as the record is closed on all other issues. Please mail written comments on the Draft SEIS to the address below. For comments exceeding five pages in

length, please mail a signed original plus 10 copies. For comments five pages or less, a signed original is sufficient. Comments must be mailed by June 6, 2005 to:

Case Control Unit  
Finance Docket No. 33407  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

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

Attention: Victoria Rutson, Chief  
Section of Environmental Analysis  
Environmental Filing

SEA will consider all comments in preparing a Final SEIS, which will include SEA's final conclusions on the four remanded issues and SEA's final recommendations, including any additional mitigation. The Board will then make its final decision regarding this project and any further environmental conditions it might impose.

## **1.7 NEXT STEPS**

Following the receipt of written comments on this Draft SEIS, SEA will prepare a Final SEIS that addresses the comments on the Draft SEIS and reflects further environmental analysis on the remanded issues, if appropriate. After the conclusion of the environmental review, the Board and each of the cooperating agencies will each issue a decision in this matter addressing the results of the environmental analysis and determining whether to approve, or in the Board's case again approve, DM&E's proposal, and whether any additional mitigation should be imposed. Until the Board and cooperating agencies complete their consideration of the remanded issues and decide whether the project should still be approved, DM&E does not have the requisite authority to construct and operate its proposed new line.