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Volume VI of the Proposed Powder River Basin Expansion Project Draft EIS contains the following items:

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APPENDIX A
Surface Transportation Board Decisions

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**Notice of Construction and Operation
Application and Request for Comments on Procedural Schedule**

Decision No. 29009

March 11, 1998

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SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33407

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION—CONSTRUCTION AND OPERATION—IN CAMPBELL, CONVERSE, NIOBRARA, AND WESTON COUNTIES, WY, CUSTER, FALL RIVER, JACKSON, AND PENNINGTON COUNTIES, SD AND BLUE EARTH, NICOLLET, AND STEELE COUNTIES, MN

AGENCY: Surface Transportation Board.

ACTION: Notice of Construction and Operation Application and Request for Comments on Procedural Schedule.

SUMMARY: The Board is publishing notice of an application filed by the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) requesting authority to construct and operate 280.09 miles of new railroad line, which would provide for an extension of DM&E's existing rail lines into the Powder River Basin coal fields in northeastern Wyoming. Specifically, the railroad seeks authority to build: (1) a 262.03-mile rail line between DM&E's existing main line in western South Dakota and the coal producing region of the Powder River Basin (PRB) south of Gillette, WY; (2) a 13.31-mile rail bypass around a portion of the line currently used by DM&E in and near Mankato, MN; and (3) a new 2.94-mile rail connection in Owatonna, MN, between DM&E's line and the line of I&M Rail Link, LLC.¹ This notice also requests comments on a procedural schedule based on a schedule that DM&E has asked the Board to establish for this proceeding.

¹ DM&E also plans several related projects, which it states are not subject to the Board's jurisdiction. These include the comprehensive rebuilding of approximately 597.8 miles of its existing rail lines consisting of: (1) a 467.55-mile segment of DM&E main line between Wasta, SD, and Mankato; (2) a 117.4-mile segment of DM&E main line between Mankato and Winona, MN; and (3) a 12.85-mile segment of DM&E branch line north of Oral, SD, to a point south of Smithwick, SD. DM&E plans to perform a substantial upgrading of an additional 239.3 miles of its existing rail lines, including the relocation and upgrading of an existing connection with Canadian Pacific Railroad near Winona/Minnesota City.

DATES: Written comments must be filed by April 2, 1998 and concurrently served on applicant's representatives. Each comment must be accompanied by a certificate of service. Applicant's reply must be filed by April 7, 1998.

ADDRESSES: Send an original and 10 copies of all pleadings referring to STB Finance Docket No. 33407 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423. A copy of each comment shall concurrently be served upon DM&E's representative: Paul A. Cunningham, Harkins Cunningham, 1300 19th Street, N.W., Suite 600, Washington, DC 20036-1609 [Fax (202) 973-7610]. Comments should contain the name and address of the commenting party, any recommendations for changes to the attached proposed procedural schedule and support for any such changes.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565-1600. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: Along with its application, DM&E has submitted a petition to establish a procedural schedule for this proceeding. DM&E's proposed schedule would establish various due dates for submissions and due dates for Board action, both in considering the merits of the application and in carrying out the environmental review process.

We believe it would be premature at this point to establish any sort of environmental review schedule for the Board to meet its responsibilities under the National Environmental Policy Act of 1969 (NEPA) and related environmental laws. We lack substantive input from other Federal and state agencies (for example, the U.S. Forest Service, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and Wyoming State Historic Preservation Division) that may have an interest in this proceeding. Without information from these agencies, we cannot anticipate the range of potential environmental impacts that may be involved with DM&E's proposal and how long the Environmental Impact Statement (EIS) process is likely to take.² We have, however, directed our Section of Environmental Analysis to begin preparation of a notice of intent to prepare an EIS and to initiate the public scoping process. This will enable us to begin to determine key environmental issues to be addressed in our NEPA analysis as expeditiously as possible.

With regard to the merits of the application, DM&E has proposed alternative schedules of 90 and 180 days in which to develop the record and issue a decision on the merits, conditioned upon completion of the environmental review process and consideration of the results of that

² Of course, if DM&E could work with these agencies to secure appropriate permits, identify potential environmental impacts, and minimize or avoid such effects, the time required for us to meet our NEPA obligations might be reduced.

process in a final decision.³ The proposal by DM&E that we issue a decision in 90 days does not warrant further consideration, and we will not request comments on it. That proposal simply does not provide adequate opportunity for public participation. Nor does it provide adequate time for the necessary evaluation of the record in light of the statutory considerations we must undertake in this case. The proposed 180-day alternative, however, does appear to provide adequate opportunity for public participation and for development of a sufficient record on which to base a conditional grant of the application and make the findings required by the statute. Therefore, we are seeking comments on the proposal by DM&E that we issue a decision in 180 days approving the applicant's construction proposal under section 10901 of the ICC Termination Act, conditioned upon consideration of the environmental impacts of the proposed construction. Under that proposal, we would issue a subsequent decision after the completion of the EIS process, allowing construction to begin, if appropriate, based on a consideration of the potential environmental impacts of the proposed transaction.

We understand that the DM&E has caused notices to be published stating that comments on the application are due March 27, 1998. While interested parties may file comments by March 27, 1998, the Board will establish a new due date for comments on the merits of the proposed transaction in any procedural schedule it ultimately adopts. Accordingly, we will require DM&E to cause notices to be published in the same places as the prior notices advising that comments will not be due until the Board establishes a procedural schedule. And after the Board publishes such a schedule, DM&E must cause to be published new notices setting forth the schedule adopted by the Board, including the due date for comments on the merits of the proposed transaction.

The purpose of this notice is to solicit input as to the establishment of a procedural schedule that provides adequate time for the submission and consideration of comments while still enabling the proceeding to move forward as expeditiously as possible.⁴ After reviewing the comments, the Board will establish an appropriate procedural schedule for consideration of the merits of the construction application.

The Board's review of construction applications is governed by both 49 U.S.C. section 10901 and the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. sections 4321-4370d. The Board intends to prepare an EIS to assess the environmental impacts

³ No actual construction could begin prior to issuance of that decision.

⁴ DM&E's proposed 180-day schedule is set forth in the attached Appendix, but is modified to reflect the removal of the portion of the schedule pertaining to environmental review and to reflect the current status of this matter.

of DM&E's proposal. The Board's Section of Environmental Analysis will separately publish a notice of intent to prepare an EIS and request comments on its scope.

Copies of the application are available for public inspection at the offices of the Board and the offices of the applicant, 337 22nd Avenue South, Brookings, SD 57006.

Decided: March 9, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

APPENDIX

PROCEDURAL SCHEDULE ON THE MERITS

In the following schedule, the term "P" refers to the date that the Board issues a procedural schedule based on the comments received from this notice and "P + n" means "n" days following that date.

P	Procedural schedule established by the Board.
P + 7	Due date for publication by DM&E of newspaper notice announcing the procedural schedule.
P + 35	Due date for written comments on Application.
P + 40	Due date for DM&E's replies to written comments on Application.
P + 70	Board decision ordering hearing under modified procedures.
P+ 135	Due date for DM&E's reply evidence and argument in support of the Application.
P + 180 (or earlier)	Service of decision (a) conditionally approving Application, contingent on completion of environmental review process, or (b) disapproving Application.

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**Notice of Intent to Prepare an Environmental Impact Statement
(EIS), Request for Comments on the Proposed EIS Scope,
and Notice for Scoping Meetings**

Decision No. 29075

March 30, 1998

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Surface Transportation Board

STB Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation -- Construction and Operation of New Rail Facilities in Campbell, Converse, Niobrara, and Weston Counties, Wyoming, Custer, Fall River, Jackson, and Pennington Counties, South Dakota, and Blue Earth, Nicollet, and Steele Counties, Minnesota.

Agency: Surface Transportation Board

Action: Notice of Intent to Prepare an Environmental Impact Statement (EIS), Request for Comments on the Proposed EIS Scope, and Notice of Scoping Meetings.

Summary: On February 20, 1998, the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) filed an application with the Surface Transportation Board (Board) for authority to construct and operate new rail line facilities in east-central Wyoming, southwest South Dakota, and south-central Minnesota. The project involves a total new construction of 280.9 miles of rail line. Additionally, DM&E proposes to rebuild 597.8 miles of existing rail line along its current system to standards acceptable for operation of unit coal trains. Because the construction and operation of this project has the potential to result in significant environmental impact, the Board's Section of Environmental Analysis (SEA) has determined that the preparation of an Environmental Impact Statement (EIS) is appropriate. SEA will hold agency and public scoping meetings as part of the EIS process, at the dates and locations described below. The exact locations of the meetings will be advertised two weeks prior to the meeting dates.

Dates and Locations**Agency Scoping Meetings**

April 29, 1998, Cheyenne, Wyoming 9-11am
 May 14, 1998, St. Paul, Minnesota 1-3 pm
 June 17, 1998, Pierre, South Dakota 9-11am

Public Scoping Meetings

April 29, 1998, Wright, Wyoming 4-7pm
 April 30, 1998, Edgemont, South Dakota 4-7pm
 May 1, 1998, Hot Springs, Wyoming 4-7pm
 May 12, 1998, Mankato, Minnesota 4-7pm
 May 13, 1998, Rochester, Minnesota 4-7pm
 June 16, 1998, Wall, South Dakota 4-7pm
 June 17, 1998, Pierre, South Dakota 4-7pm
 June 18, 1998, Huron, South Dakota 4-7pm
 June 29, 1998, Brookings, South Dakota 4-7pm
 June 30, 1998, Springfield, Minnesota 4-7pm

Both the agency and public scoping meetings will be informal meetings during which interested persons may ask questions about the proposal and the Board's environmental review

process, and advise the Board's representative about potential environmental effects of the project. SEA will make available to the public a draft scope of the EIS before the first meeting. SEA will also provide time for the public to submit written comments on the draft scope. That period will run concurrently with the agency and public meetings. SEA will issue a final scope shortly after the final meeting.

For Further Information Contact: Ms. Victoria Rutson, SEA Project Manager, Powder River Basin Expansion Project, (202) 565-1545.

SUPPLEMENTARY INFORMATION

Background: The proposed rail construction project, referred to as the Powder River Basin Expansion Project, would involve the construction and operation of 280.9 miles of new rail line by the Dakota, Minnesota & Eastern Railroad Corporation (DM&E), Brookings, South Dakota. The project would provide access for a third rail carrier to serve the region's coal mines and transport coal eastward from the Powder River Basin. New rail construction would include 262.03 miles of rail line extending off DM&E's existing system near Wasta, South Dakota, extending generally southwesterly to Edgemont, South Dakota and then westerly into Wyoming to connect with existing coal mines located south of Gillette, Wyoming. This portion of the new construction would traverse portions of Custer, Fall River, Jackson, and Pennington Counties, South Dakota and Campbell, Converse, Niobrara, and Weston Counties, Wyoming.

New rail line construction would also include a 13.31 mile line segment around Mankato, Minnesota within Blue Earth and Nicollet Counties. DM&E currently has trackage on both sides of Mankato, accessed by trackage rights on rail line operated by Union Pacific Railroad (UP). The proposed Mankato construction would provide DM&E direct access between its existing lines, avoid operational conflicts with UP, and route rail traffic around the southern side of Mankato, avoiding the downtown area.

The final proposed segment of new rail construction would involve a connection between the existing rail systems of DM&E and I&M Rail Link. The connection would include construction and operation of 2.94 miles of new rail line near Owatonna, Steele County, Minnesota. The connection would allow interchange of rail traffic between the two carriers.

In order to transport coal over the existing system, DM&E proposes to rebuild 597.8 miles of rail line along its existing system. The majority of this--584.95 miles-- would be along DM&E's mainline between Wasta, South Dakota, and Winona, Minnesota. An additional 12.85 miles of existing rail line between Oral and Smithwick, South Dakota would also be rebuilt. Rail line rebuilding would include rail and tie replacement, additional sidings, signals, grade crossing improvements, and other systems.

DM&E plans to transport coal as its principle commodity. However, shippers desiring rail access could ship other commodities in addition to coal over DM&E's rail line. Existing shippers along the existing DM&E system would continue to receive rail service.

Environmental Review Process: At this time, the Board's SEA is requesting information and general comments on the scope of environmental issues to be addressed in the EIS for the proposed project. The National Environmental Policy Act (NEPA) process is intended to assist the Board and the public in identifying and assessing the potential environmental consequences of a proposed action before a decision on the proposed action is made. The first stage of the EIS process is scoping. Scoping is an open process for determining the scope of environmental issues to be addressed in the EIS and their potential for significance. SEA will soon develop and make available a draft scope of study for the EIS and provide a period for the submission of written comments on it. Concurrently, scoping meetings will be held as noted above to provide opportunities for public involvement and input into the scoping process. Following the issuance of a draft scope and the comment period, SEA will issue a final scope of study for the EIS.

After issuing the final scope of study, SEA will prepare a Draft EIS (DEIS) for the project. The DEIS will address those environmental issues and concerns identified during the scoping process and detailed in the scope of study. It will also contain SEA's preliminary recommended environmental mitigation measures. The DEIS will be made available upon its completion for public review and comment. A Final EIS (FEIS) then will be prepared reflecting SEA's further analysis and the comments to the DEIS. In reaching its decision in this case, the Board will take into account the DEIS, FEIS, and all environmental comments that are received.

Filing Environmental Comments: SEA encourages broad participation in the EIS process. Interested persons and agencies are invited to participate in the scoping phase by reviewing the scope of study, attending the scoping meetings, and submitting written comments SEA. A signed original and 10 copies of comments should be submitted to:

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

To ensure proper handling of your comments, you must mark your submission:

Attention: Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing

By following this procedure, your comments will be placed in the formal Public Record for this case. In addition, SEA will add your name to its mailing list for distribution of the final scope of study for the EIS, the DEIS, and FEIS.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary

**Notice of Availability of Draft Scope of Study
for the Environmental Impact Statement (EIS) and Request for
Comments**

Decision No. 29300

June 10, 1998

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SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation -- Construction and Operation of New Rail Facilities in Campbell, Converse, Niobrara, and Weston Counties, Wyoming, Custer, Fall River, Jackson, and Pennington Counties, South Dakota, and Blue Earth, Nicollet, and Steele Counties, Minnesota.

Agency: Surface Transportation Board

Action: Notice of Availability of Draft Scope of Study for the Environmental Impact Statement (EIS) and Request for Comments.

Summary: On February 20, 1998, the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) filed an application with the Surface Transportation Board (Board) for authority to construct and operate new rail line facilities in east-central Wyoming, southwest South Dakota, and south-central Minnesota. The project involves a total new construction of 280.9 miles of rail line. Additionally, DM&E proposes to rebuild 597.8 miles of existing rail line along its current system to standards acceptable for operation of unit coal trains. Because the construction and operation of this project has the potential to result in significant environmental impact, the Board's Section of Environmental Analysis (SEA) has determined that the preparation of an Environmental Impact Statement (EIS) is appropriate. SEA is holding agency and public scoping meetings as part of the EIS process, as discussed in the Notice of Intent to Prepare an EIS published by the Board on March 27, 1998. As part of the scoping process, the SEA has developed a draft Scope of Study for the EIS.

Dates: Written comments on the draft Scope of Study are due July 10, 1998.

Filing Environmental Comments: Interested persons and agencies are invited to participate in the EIS scoping process. A signed original and 10 copies of comments should be submitted to:

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

To ensure proper handling of your comments, you must mark your submission:

Attention: Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing

For Further Information Contact: Ms. Victoria Rutson, SEA Project Manager, Powder River Basin Expansion Project, (202) 565-1545 or Mr. Steve Thornhill of Burns & McDonnell, SEA's third party contractor, at (816) 822-3851.

SUPPLEMENTARY INFORMATION

Draft Scope of Study for the EIS

Proposed Action and Alternatives

The proposed action, referred to as the Powder River Basin Expansion Project, would involve the construction and operation of 280.9 miles of new rail line and the rebuilding of 597.8 miles of existing rail line by the Dakota, Minnesota & Eastern Railroad Corporation (DM&E), Brookings, South Dakota, as described in the February 20, 1998 application for construction and operation authority for the project filed by DM&E and in the March 27, 1998 Notice of Intent to Prepare an EIS published in the Federal Register by the Board.

Consistent with its jurisdiction under the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995), the Board intends to conduct an environmental analysis of the new construction and the increase in operations over DM&E's existing system. The EIS will not consider any proposed construction or improvements to DM&E's existing system, but will address the anticipated impacts of the projected increases in train traffic over the entire existing system.

The reasonable and feasible alternatives that will be evaluated in the EIS are (1) the no-action alternative (2) construction of the project along the identified preferred alignments in Wyoming and South Dakota for the mainline extension and in Minnesota for the Mankato Bypass and Owatonna connecting track and (3) construction of the project along each of the identified alternative alignments in Wyoming and South Dakota for the mainline extension and in Minnesota for the Mankato Bypass and Owatonna connecting track.

Environmental Impact Analysis

Proposed New Construction

Analysis in the EIS will address the proposed activities associated with the construction and operation of new rail facilities and their potential environmental impacts, as appropriate. The scope of the analysis will include the following activities:

1. Proposed construction of new rail mainline extension to access coal mines south of Gillette, Wyoming.

2. Proposed construction of new rail mainline to bypass DM&E's existing trackage rights on Union Pacific Railroad in Mankato, Minnesota.
3. Proposed construction of new rail line connection between DM&E and I&M Rail Link south of Owatonna, Minnesota.

Impact Categories

The EIS will address potential impacts from the proposed construction and operation of new rail facilities on the human and natural environment. Impacts areas addressed will include the categories of land use, biological resources, water resources, geology and soils, air quality, noise, energy resources, socioeconomics as they relate to physical changes in the environment, safety, transportation systems, cultural and historic resources, recreation, aesthetics, and environmental justice. The EIS will include a discussion of each of these categories as they currently exist in the project area and address the potential impacts from the proposed project on each category as described below:

1. Land Use

The EIS will:

- A. Describe existing land use patterns within the project area and identify those land uses and the amounts of each potentially impacted by new rail line construction.
- B. Describe the potential impacts associated with the proposed new rail line construction to agricultural lands including cropland, pastureland, rangeland, grassland, woodland, developed land, and any other land uses identified within the project area. Such potential impacts may include impacts to farming/ranching activities, introduction of noxious weeds, fire hazard, incompatibility with existing land uses, relocation of residences or businesses, and conversion of land to railroad uses.
- C. Propose mitigative measures to minimize or eliminate potential project impacts to land use.

2. Biological Resources

The EIS will:

- A. Describe the existing biological resources within the project area including vegetative communities, wildlife and fisheries, and federally threatened or endangered species and the potential impacts to these resources resultant from construction and operation of new rail line.

- B. Describe the wildlife sanctuaries, refuges, and national or state parks, forests, or grasslands within the project area and the potential impacts to these resources resultant from construction and operation of new rail line.
- C. Propose mitigative measures to minimize or eliminate potential project impacts to biological resources.

3. Water Resources

The EIS will:

- A. Describe the existing surface and groundwater resources within the project area, including lakes, rivers, streams, stock ponds, wetlands, and floodplains and the potential impacts on these resources resultant from construction and operation of new rail line.
- B. Describe the permitting requirements for the proposed new rail line construction in regard to wetlands, stream crossings, water quality, and erosion control.
- C. Propose mitigative measures to minimize or eliminate potential project impacts to water resources.

4. Geology and Soils

The EIS will:

- A. Describe the geology and soils found within the project area, including unique or problematic geologic formations or soils and prime farmland soils.
- B. Describe measures employed to avoid or construct through unique or problematic geologic formations or soils.
- C. Describe the impacts of new rail line construction on prime farmland soils.
- D. Propose mitigative measures to minimize or eliminate potential project impacts to geology and soils.

5. Air Quality

The EIS will:

- A. Evaluate rail air emissions on new rail that exceed the Board's environmental thresholds in 49 CFR 1105.7(e)(5)(I), in an air quality attainment or maintenance

area as designated under the Clean Air Act . The threshold anticipated to apply to this project is eight trains per day on any segment of new rail line.

- B. Evaluate rail air emissions on new rail line, if the proposed project affects a Class I or non-attainment area as designated under the Clean Air Act. The threshold for Class I and non-attainment areas anticipated to apply to this project is 3 trains per day or more.
- C. Evaluate the potential air quality benefits associated with the increased availability and utilization of lower sulfur Powder River Basin coal.
- D. Discuss the potential air emissions increases from vehicle delays at new grade rail crossings where the rail crossing is projected to experience an increase in rail traffic over the thresholds described above for attainment, maintenance, Class I, and non-attainment areas and that have an average daily vehicle traffic level of over 5,000. Emissions from vehicle delays at new grade rail crossings will be factored into the emissions estimates for the affected area, as appropriate.
- E. Describe the potential air quality impacts resulting during new rail line construction activities.
- F. Propose mitigative measures to minimize or eliminate potential project impacts to air quality during new rail line construction.

6. Noise

The EIS will:

- A. Describe the potential noise impacts during new rail line construction.
- B. Describe potential noise impacts of new rail line operation for those areas that exceed the Board's environmental threshold of eight or more trains per day.
- C. Propose mitigative measures to minimize or eliminate potential project impacts to noise receptors.

7. Energy Resources

The EIS will:

- A. Describe the potential environmental impact of the new rail line on the transportation of energy resources and recyclable commodities.
- B. Describe the environmental impacts of the new rail line on utilization of the nations energy resources.

8. Socioeconomics

The EIS will:

- A. Describe the potential environmental impacts to residences, residential areas, and communities within the project area as a result of new rail line construction and operation activities.
- B. Describe the potential environmental impacts to commercial and industrial development in the project area as a result of new rail line construction and operation.
- C. Propose mitigative measures to minimize or eliminate potential adverse project impacts to social and economic resources.

9. Safety

The EIS will:

- A. Describe rail/highway grade crossing safety factors at new grade crossings, as appropriate.
- B. Describe the potential for increased probability of train accidents, derailments, and train/vehicular accidents at new grade crossings, as appropriate.
- C. Describe the potential for disruption and delays to the movement of emergency vehicles due to new rail line construction and operation.
- D. Propose mitigative measures to minimize or eliminate potential adverse project impacts to safety.

10. Transportation Systems

The EIS will describe the potential effects of new rail line construction and operation on the existing transportation network in the project area including:

- (1) impacts to other rail carriers' operations and
- (2) vehicular delays at new grade crossings for those crossings having average daily vehicle traffic of 5,000 or more.

11. Cultural and Historic Resources

The EIS will:

- A. Describe the potential impacts to historic structures or districts previously recorded and determined potentially eligible, eligible, or listed on the National Register of Historic Places within or immediately adjacent to the right-of-way for the preferred and alternative construction alignments.
- B. Describe the potential impacts to archaeological sites previously recorded and either listed as unevaluated or determined potentially eligible, eligible, or listed on the National Register of Historic Places within the right-of-way for the preferred and alternative construction alignments.
- C. Describe the potential impacts to historic structures or districts identified by ground survey and determined potentially eligible or eligible for listing on the National Register of Historic Places within or immediately adjacent to the right-of-way for the preferred construction alignment.
- D. Describe the potential impacts to archaeological sites identified by ground survey and determined potentially eligible or eligible for listing on the National Register of Historic Places within the right-of-way for the preferred construction alignment.
- E. Describe the potential general impacts to paleontological resources in the project area due to project construction, if necessary and required.
- F. Describe the potential impacts to paleontological resources identified by ground survey of the preferred construction alternative alignment on federal lands, if necessary and required.

12. Recreation

The EIS will describe the potential impacts of the proposed new rail line construction and operation on the recreational opportunities provided in the project area.

13. Aesthetics

The EIS will:

- A. Describe the potential impacts of the proposed new rail line construction on any areas identified or determined to be of high visual quality.

- B. Describe the potential impacts of the proposed new rail line construction on any designated wilderness areas.
- C. Describe the potential impacts of the proposed new rail line construction on any waterways considered for or designated as wild and scenic.

14. Environmental Justice

The EIS will:

- A. Describe the demographics in the project area and the immediate vicinity of the proposed new construction, as possible, including communities potentially impacted by the construction and operation of the proposed new rail line construction.
- B. Evaluate whether new rail line construction or operation activities would have a disproportionately high adverse impact on any minority or low-income groups.

Increased Traffic on Existing DM&E System

Analysis in the EIS will address the potential environmental impacts associated with the increased level of rail traffic on DM&E's existing rail system due to operation of the proposed new rail facilities. The scope of the analysis will include the following activities:

1. Analysis of anticipated changes in the levels of rail traffic along the existing DM&E system to be rebuilt, in association with proposed new construction projects, to facilitate coal transportation. Those segments of rail line that meet or exceed the Board's thresholds for environmental review, as defined in 49 CFR 1105.7, will be evaluated. In cases where the Board's environmental rules do not provide a threshold, the EIS will use eight trains per day or more as the threshold for environmental evaluation.

Impact Categories

The EIS will address potential impacts from the proposed increases in trains operating over existing rail facilities on the human environment. Impacts areas addressed will include the categories of air quality, noise, energy resources, safety, transportation systems, and environmental justice. The EIS will include a discussion of each of these categories as they currently exist in the project area and address the potential impacts from the proposed operational impacts of the project on each category as described below:

1. Air Quality

The EIS will:

- A. Evaluate rail air emissions for existing rail lines that exceed the Board's environmental thresholds in 49 CFR 1105.7(e)(5)(I), in an air quality attainment or maintenance area as designated under the Clean Air Act . The thresholds anticipated to apply to this project include:
 - (1) A 100 percent increase in rail traffic on any segment of DM&E's existing system.
 - (2) An increase of eight trains per day on any segment of rail line affected by the proposed construction.
- B. Evaluate rail air emissions for existing rail lines, if the proposed project affects a Class I or non-attainment area as designated under the Clean Air Act. Thresholds for Class I and non-attainment areas anticipated to apply to this project are as follows:
 - (1) An increase in rail traffic of 50 percent or more or
 - (2) An increase of 3 trains per day or more.
- C. Discuss the net increase in emissions from increased railroad operations associated with the proposed operations over the existing DM&E system.
- D. Discuss the potential air emissions increases from vehicle delays at existing rail crossings where the rail crossing is projected to experience an increase in rail traffic over the thresholds described above for attainment, maintenance, Class I, and non-attainment areas and that have an average daily vehicle traffic level of over 5,000. Emissions from vehicle delays at existing rail crossings will be factored into the emissions estimates for the affected area.

2. Noise

The EIS will:

- A. Describe potential noise impacts of project operation on existing DM&E rail lines that exceed the Board's environmental thresholds of a 100 percent or more increase in rail traffic or an increase of 8 or more trains per day.
- B. Identify whether proposed train operations on DM&E's existing rail lines will cause:

- (1) An increase in noise levels of three decibels Ldn or more;
or
- (2) An increase to a noise level of 65 decibels Ldn or greater. If so, an estimate of the number of sensitive receptors (e.g., schools, libraries, churches, residences) within such areas will be made based on site visits to those areas potentially affected.

3. Energy Resources

The EIS will:

- A. Describe the potential environmental impact on transportation of energy resources and recyclable commodities.
- B. Describe the environmental impacts from rail operations over the existing DM&E rail system on utilization of the nation's energy resources.

4. Safety

The EIS will:

- A. Describe rail/highway grade crossing safety factors for existing grade crossings, as appropriate.
- B. Describe the potential for increased probability of train accidents, derailments, and train/vehicular accidents along the existing DM&E system, as appropriate.
- C. Describe the potential for disruption and delays to the movement of emergency vehicles at existing crossings due to rail operations on the existing DM&E system.
- D. Describe the changes at existing grade crossings implemented to increase safety at existing grade crossings due to increased rail operations on the DM&E system. Such changes would include signalization upgrades and conversion of grade crossings to grade separated crossings.
- E. Propose mitigative measures to minimize or eliminate potential adverse project impacts to safety.

5. Transportation Systems

The EIS will:

- A. Describe the potential effects of project construction and operation on the existing transportation network in the project area including:
 - (1) impacts to other rail carriers' operations and
 - (2) vehicular delays at new grade crossings for those crossings having average daily vehicle traffic of 5,000 or more.

- B. Describe the effects of the proposed construction and subsequent operation of the proposed project throughout DM&E's existing system.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary

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**Amended Notice of Intent to Prepare an Environmental Impact
Statement (EIS); Extension of Request for Comments on the Draft
EIS Scope**

Decision No. 29482

August 7, 1998

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DEPARTMENT OF TRANSPORTATION

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation-- Construction and Operation of New Rail Facilities in Campbell, Converse, Niobrara, and Weston Counties, Wyoming; Custer, Fall River, Jackson, and Pennington Counties, South Dakota; and Blue Earth, Nicollet, and Steele Counties, Minnesota.

Agencies: Surface Transportation Board; U.S.D.A. Forest Service; U.S.D.I. Bureau of Land Management; U.S. Army Corps of Engineers (collectively, the "Agencies")

Action: Amended Notice of Intent to Prepare an Environmental Impact Statement (EIS); Extension of Request for Comments on the Draft EIS Scope.

Summary: On February 20, 1998, the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) filed an application with the Surface Transportation Board (Board) for authority to construct and operate new rail line facilities in east-central Wyoming, southwest South Dakota, and south-central Minnesota. The project involves approximately 280.9 miles of new rail line construction. Additionally, DM&E proposes to rebuild approximately 597.8 miles of existing rail line along its current system to standards acceptable for operation of unit coal trains. On April 28, 1998, DM&E submitted a Special Use Application to the U.S.D.A. Forest Service (USFS) for an easement under the Federal Land Management Policy Act to build new rail lines across portions of the Thunder Basin National Grassland in Wyoming, administered by the Medicine Bow-Routt National Forests, and across portions of the Buffalo Gap National Grassland, administered by the Nebraska National Forest. Because portions of RARE II roadless areas on the Buffalo Gap National Grassland could be affected, there is a possibility that the Nebraska National Forest Land and Resource Management Plan could be amended in the Forest Service Record of Decision. The Northern Great Plains (NGP) Management Plan Revision Environmental Impact Statement (EIS) is being prepared at this time, which could affect the proposed action. Conversely, the proposed action, if approved, could affect the NGP Management Plan and a plan amendment may also be necessary. In April, 1998, DM&E also submitted its application to the U.S.D.I. Bureau of Land Management (BLM) for a right-of-way across public lands administered by the BLM in Wyoming and South Dakota for the construction of new rail lines. Because the BLM is presently preparing the Newcastle Resource Management Plan EIS, the proposed action could affect this Plan as well or the Plan could have an effect on the proposed action. Additionally, the DM&E will submit an application to the U.S. Army Corps of Engineers (COE), when appropriate, for a permit regarding the proposed dredge and fill activities within the waters of the United States, and any other appropriate permit required by the COE, relative to the proposed construction of new rail lines or reconstruction of existing lines. The U.S. Bureau of Reclamation is presently preparing an EIS on the Cheyenne River/Angostura

project, which could be affected by the proposed action or which could have an effect on the proposed action. Because the construction and operation of the proposed project has the potential to result in significant impacts on the quality of the human environment, the Agencies have determined that the preparation of an EIS is appropriate. The Board's Section of Environmental Analysis (SEA) has previously held agency and public scoping meetings and has accepted written public comments as part of the EIS process. However, the previous Notice of Intent did not include notification to the public that other federal agencies would have decision-making authority. Therefore, the purpose of this Amended Notice of Intent is to notify persons and agencies interested in or affected by the proposed project, of additional USFS, BLM, and COE agency decisions that will be triggered by the project, and to seek additional comments relating to these agency decisions.

Additional Public Comment Period: SEA will continue to make available to the public a draft scope of the EIS. The Agencies will also provide an additional thirty-day period for the public to submit written comments on the draft scope. The additional comment period will close 30 days after the publication date of this Amended Notice of Intent in the Federal Register, which shall be September 8, 1998. PLEASE NOTE: If you have previously submitted comments to SEA regarding this project, you are not required to re-submit those comments to be considered by the Agencies. However, you may submit additional comments if you so desire.

For Further Information Contact: Victoria Rutson, Project Manager, Surface Transportation Board, Powder River Basin Expansion Project, 1-877-404-3044; U.S.D.A. Forest Service, Wendy Schmitzer (307) 358-4690; U.S.D.I. Bureau of Land Management, Bill Carson, (307) 746-4453; U.S. Army Corps of Engineers, Patsy Freeman, (402) 221-3803 or Jerry Folkers (402) 221-4173.

SUPPLEMENTARY INFORMATION

Background: The proposed rail construction project, referred to as the "Powder River Basin Expansion Project," would involve the construction and operation of approximately 280.9 miles of new rail line by the Dakota, Minnesota & Eastern Railroad Corporation (DM&E), Brookings, South Dakota. The project would provide access for a third rail carrier to serve the region's coal mines and transport coal eastward from the Powder River Basin. New rail construction would include approximately 262.03 miles of rail line extending off DM&E's existing system near Wasta, South Dakota, extending generally southwesterly to Edgemont, South Dakota, and then westerly into Wyoming to connect with existing coal mines located south of Gillette, Wyoming. This portion of the new construction would traverse portions of Custer, Fall River, Jackson, and Pennington Counties, South Dakota and Campbell, Converse, Niobrara, and Weston Counties, Wyoming.

New rail construction would also include an approximate 13.31 mile line segment around Mankato, Minnesota, within Blue Earth and Nicollet Counties. DM&E currently has trackage on both sides of Mankato, accessed by trackage rights on rail line operated by Union Pacific Railroad (UP). The proposed Mankato construction would provide DM&E direct access between its existing lines, avoid operational conflicts with UP, and route rail traffic around the southern side of Mankato, avoiding the downtown area.

The final proposed segment of new rail construction would involve a connection between the existing rail systems of DM&E and I&M Rail Link. The connection would include construction and operation of approximately 2.94 miles of new rail line near Owatonna, Steele County Minnesota. The connection would allow interchange of rail traffic between the two carriers.

In order to transport coal over the existing system, DM&E proposes to rebuild approximately 597.8 miles of rail line along its existing system. The majority of this, approximately 584.95 miles, would be along DM&E's mainline between Wasta, South Dakota, and Winona, Minnesota. An additional approximate 12.85 miles of existing rail line between Oral and Smithwick, South Dakota, would also be rebuilt. Rail line rebuilding would include rail and tie replacement, additional sidings, signals, grade crossing improvements, and other systems.

DM&E's plans to transport coal as its principal commodity. However, shippers desiring rail access could ship other commodities in addition to coal over DM&E's rail line. Existing shippers along the existing DM&E system would continue to receive rail service.

Environmental Review Process: The Surface Transportation Board shall be the lead agency, pursuant to 40 CFR 1501.5(c), and shall supervise the preparation of the EIS. The USFS, the BLM, and the COE shall be cooperating agencies, pursuant to 40 CFR 1501.6, and shall adopt the EIS and base their respective decisions on it. In order to assure that the EIS includes all of the information necessary for the decisions by each of the Agencies, they are requesting information and general comments on the scope of environmental issues to be addressed in the EIS for the proposed project. The National Environmental Policy Act (NEPA) process is intended to assist the Agencies and the public in identifying and assessing the potential environmental consequences of a proposed action before a decision on the proposed action is made. The SEA has developed and will continue to make available a draft scope of study for the EIS and provide a period of submission of written comments on it. Following this additional comment period, SEA will issue a final scope of study for the EIS.

Thereafter, SEA will prepare a Draft Environmental Impact Statement (DEIS) for the proposed project. The DEIS will address those environmental issues and concerns identified during the scoping process and detailed in the scope of study. It will also contain a reasonable range of alternatives to the proposed action and recommended environmental mitigation measures. The DEIS will be made available upon its completion for public review

and comment. A Final EIS (FEIS) will then be prepared reflecting SEA's further analysis and the comments on the DEIS. In reaching each decision in this case, the Agencies will take into account the DEIS, the FEIS, and all public and agency comments received.

Filing Comments: The Agencies encourage broad participation in the EIS process. Interested persons and agencies are invited to participate in the scoping phase through reviewing the scope of study and submitting written comments to the SEA. A signed original of comments should be submitted to:

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

To ensure proper handling of your comments, you must mark your submission:

Attention: Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing

By following this procedure, your comments will be placed in the formal public record for this case. In addition, SEA will add your name to its mailing list for distribution of the final scope of study for the DEIS and FEIS and the decision documents relating thereto.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary

**Decision - Findings that Application Filed by DM&E Satisfies the
Transportation-Related Requirements of 49 USC 10901**

Decision No. 29823

December 10, 1998

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SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33407

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

Decided: December 9, 1998

We are making a finding, based on the information available to date, that the application filed by the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) seeking authority to construct and operate some 280 miles of new rail line, which would extend the DM&E rail system into the Powder River Basin (PRB or Basin) coal fields in northeastern Wyoming, satisfies the transportation-related requirements of 49 U.S.C. 10901. The extent and nature of the environmental impacts associated with this project, and whether they can be adequately mitigated, will not be entirely clear until the environmental review process, now under way, has been completed. We will issue a subsequent decision on the entire proposed project after completion of the environmental review process assessing the potential environmental effects, and the cost of any environmental mitigation we might impose. This decision does not in any way prejudice our ultimate decision. Nor can any new construction begin until our final decision has been issued and has become effective.

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INTRODUCTION

By application filed February 20, 1998, DM&E¹ seeks authority under 49 U.S.C. 10901 to construct and operate a new railroad line into the Basin. DM&E plans to build a new 262.03-mile line from a point on its existing line near Wasta, SD, in a generally southern and then

¹ DM&E is a Class II railroad currently operating an 1,100-mile rail system located primarily in South Dakota and Minnesota. It moves in the neighborhood of 60,000 carloads of traffic a year, consisting of a variety of grain and mineral products.

western direction, terminating at 11 specified mine sites² in Campbell and Converse Counties, WY. It also plans to build a new 13.31-mile line near Mankato, MN (to improve its route and to avoid congestion on a line in Mankato over which DM&E currently has trackage rights), and a new 2.94-mile line near Owatona, MN, to connect with I&M Rail Link there. The projected cost to construct the approximately 278 miles of new rail lines envisioned for the project is \$532 million.

In connection with this construction, DM&E also plans to rebuild and comprehensively upgrade some 598 miles of its existing rail line, including relocating and upgrading an existing connection at Winona, MN. The rebuilding and upgrading portions of the project, which would include additional sidings, signaling, grade crossing protections, and other system improvements, would cost approximately \$876 million. The total project then, with a few other expected modifications, would cost approximately \$1.4 billion.

PROCEDURAL BACKGROUND

Notice of the construction application was served and published on March 13, 1998. In that notice/decision, we determined that it was premature to establish a procedural schedule for the environmental issues which were raised by the application, but requested comments on a procedural schedule for consideration of the transportation issues.³ By decision served May 7,

² Caballo, Belle Ayr, Caballo Rojo, Cordero, Coal Creek, Jacobs Ranch, Black Thunder, North Rochelle, North Antelope, Rochelle and Antelope.

³ We emphasized at the outset that, although we were initially considering the transportation aspects of the proposed project separately from the environmental aspects, no final decision permitting construction to begin would be issued until such time as all statutory requirements--under both the environmental laws and the transportation laws--had been satisfied. Although the term "conditional approval" has been used to describe this process, there is no approval involved until the entire process is completed. Rather, the Board makes findings on whether the applicant has satisfied the transportation aspects of section 10901. Only after completion of the environmental process would we allow construction, if appropriate, to begin. It is possible that in our final analysis we could determine that, due to possible adverse environmental impacts, the public interest dictates that the application be denied even though the criteria of section 10901 have otherwise been met. See Indiana and Ohio Railway Company--Construction and Operation--Butler, Warren, and Hamilton Counties, Ohio, 9 I.C.C.2d 783 (1993) (Indiana and Ohio). There, the ICC determined that, even though the applicant was financially fit, there was public demand for the service, and the project would not unduly harm existing services, public safety concerns outweighed the transportation benefits of the proposed

(continued...)

1998, the Board issued a procedural schedule pertaining to the transportation aspects of this proceeding which permitted interested parties to submit comments and replies. After these submissions were received, the Board set the matter for hearing under the modified procedure, which solicited yet another round of evidentiary pleadings from interested parties. In that decision, served July 16, 1998, we discussed the unique issues and concerns that had been raised in the case to date. We provided guidance for the material to be filed in the second round of comments and explained the type of information we would need to go forward with this case, given the serious concerns raised by the Mid States Coalition for Progress (MSC or the Coalition)⁴ and others that DM&E is a marginal carrier that should not be considering such a financially risky enterprise, especially since it may not be needed. The record on the transportation aspects of the proceeding, after we granted DM&E an extension of time to file its reply, closed on October 5, 1998.⁵

Concurrently, the Board's Section of Environmental Analysis (SEA) held agency and public meetings, called scoping meetings, to determine the scope of the environmental analysis. SEA also accepted written public comments as part of the ongoing environmental impact statement (EIS) process. On June 10, 1998, SEA developed and made available a draft scope of study for the EIS and provided an opportunity for public review and comment. On August 7, 1998, SEA published an Amended Notice of Intent to notify persons and agencies interested in or affected by the proposed project of additional agency decisions by the Forest Service (U.S. Department of Agriculture), the Bureau of Land Management (U.S. Department of the Interior), and the U.S. Army Corps of Engineers, that would be made by those agencies related to the project, and to seek additional comments relating to these decisions. Also, this notice advised the public that the Board would be the lead agency and that the other agencies would be cooperating agencies in the EIS process.

³(...continued)

line, and the application was denied.

⁴ The Coalition consists of, among others, landowners and ranchers whose property would be crossed by the proposed project, as well as individuals who otherwise claim they would be adversely affected by the project. Members of the Coalition are listed in Attachment A to Volume I of its Brief filed August 31, 1998.

⁵ In a decision served November 3, 1998, the Board granted the Coalition's October 28, 1998 motion for leave to file supplemental evidence 23 days after the close of the record in order to respond to certain new evidence contained in DM&E's rebuttal. That decision also extended the target date for issuance of this decision by 23 days, to December 10, 1998. On November 30, 1998, the United States Department of Agriculture (USDA) filed a request seeking to be made a party of record here and also submitting comments generally in favor of this construction project. MSC has filed in opposition to the Board's consideration of USDA's request.

The Board and these cooperating agencies provided an additional 30-day period, which closed on September 8, 1998, for the public to submit written comments on the draft scope of study and on the August 7th Amended Notice of Intent. Now that this additional comment period has ended, SEA and the cooperating agencies will issue a final scope of study for the EIS, which will be made available to the public. Thereafter, SEA, working with the cooperating agencies, will prepare a Draft Environmental Impact Statement (DEIS) for the proposed project, including proposed environmental mitigation. The DEIS will then be submitted for public comments. The comments will be taken into account in the preparation of a Final Environmental Impact Statement (FEIS). The Board then will review the entire environmental record in making its final decision in this case.

POSITIONS OF THE PARTIES

We have received numerous pleadings from landowners, environmental groups, shipper organizations, shippers and receivers (including electric utilities), DM&E and other railroads, government entities, and rail labor unions, both in support of and in opposition to the project.⁶ We have reviewed all the pleadings, but will focus in this decision on DM&E's pleadings, the pleadings submitted in support on behalf of the Western Coal Traffic League (WCTL),⁷ and the pleading filed in opposition by the Coalition, which reflect the sort of objections being raised by the other parties in opposition.

The Coalition maintains generally that DM&E is a marginal railroad which has struggled

⁶ We have considered all comments. However, because of the large number of comments and because many of them make similar arguments, we will not discuss each comment separately. We have addressed all of the issues raised in the comments. A list of the parties submitting formal comments is attached, with an indication of each party's position. Only the comments of those parties who filed comments in compliance with the Board's rules, which require service of a copy of the comments on DM&E, have been treated as formal comments.

⁷ Seven individual power providers who purchase and pay for the rail transportation of Basin coal for use as an electric generation fuel source joined in WCTL's pleading and submission of verified statements in support of the application. These individual providers are Commonwealth Edison Company, Dairyland Power Cooperative, Kansas City Power & Light Company, Lower Colorado River Authority, Minnesota Power, Northern States Power Company, and Wisconsin Public Service Corporation. Together with WCTL, these parties collectively are referred to herein as Coal Consumers.

for years to maintain its current operations, and that to undertake a project of this magnitude with no firm financing or customer commitments would jeopardize its common carrier obligation to serve its existing shippers. MSC claims that DM&E's application fails to meet the section 10901 statutory standard in that the rail carrier is not fit, financially,⁸ or otherwise, to undertake the construction and operation of the proposed line; there is no public demand or need for the proposed service, which would duplicate competitive and efficient rail service already being provided; and the proposed project would harm, rather than serve, the public interest.

The Coalition asserts that the most basic problem presented by DM&E's construction application is that its pursuit and subsequent failure would threaten a system-wide loss of DM&E rail service. DM&E's financial projections for the project, MSC argues, are overstated, and are premised upon both unrealistically high forecasts of coal tonnage that DM&E might attract to its system and the rates that could be charged for movement of that coal. The Coalition doubts that DM&E would be able to obtain more than 42 million tons of coal traffic annually and that this volume, in light of MSC's conclusions as to DM&E's costs and revenues, would not permit the railroad to earn revenues sufficient to pay for the line extension and rehabilitation. The project is not economically viable, MSC states, and would destroy DM&E's ability to continue to provide its current services.⁹

⁸ This is not a case, the Coalition argues, in which the Board should defer to the marketplace to decide whether it makes sense to build the DM&E project or not because: (1) the proposed new line can be built only if DM&E is granted the governmental power of eminent domain because DM&E cannot otherwise acquire the private land that it would need to build its new line; and (2) it is clear that the private sector has no interest in investing in this project and that only if the Board were to approve the application would skeptical lenders and equity investors re-think their doubts about the plausibility of DM&E's claims.

⁹ In this regard, the Coalition submits the verified statement of Michael A. Nelson, in which he concludes:

The coal volume estimate of 100 million tons annually by 2007, which is relied upon by DM&E as the basis for the design and financial support of the project, is highly unrealistic in the context of likely market conditions for PRB coal and factors that are likely to govern DM&E's market share. Rather, a reasonably optimistic estimate of the maximum volume attainable by DM&E from this project is approximately 42 million tons of coal annually. . . . At likely volume and unit revenue levels, DM&E's overall revenues from its coal traffic are insufficient in aggregate to pay the costs associated with the proposed project.

(continued...)

Further, the Coalition asserts that there has been no credible showing of demand or need for the proposed project, noting that two large Class I railroads, BNSF and UP,¹⁰ currently serve all the mines DM&E proposes to serve and that DM&E does not project that its entry into the market will result in lower rates charged to customers. MSC claims that the public interest is not served by the expenditure of \$1.4 billion on the construction of redundant rail facilities, particularly where there has been no showing that existing service is inadequate. DM&E's proposed service, the Coalition concludes, would offer nothing to the marketplace that BNSF and UP do not today provide.

The Coalition also questions DM&E's ability to conduct the coal train operations it projects and maintains that applicant has provided no assurance that its PRB coal trains would ever reach a customer. The Coalition asserts that DM&E's aggressive and untested operating plan, calling for highly coordinated and very tightly scheduled train operations, is not workable.

Finally, the Coalition, while acknowledging that only the transportation aspects of the project are at issue now, contends that the deleterious environmental impacts of the project require rejection of this application. The Coalition requests that we at least withhold making any findings on the transportation issues until completion of the environmental review process.

DM&E responds that the rail transportation policy favors the construction of new rail lines and that, under revised section 10901, there is a heavy burden on opponents to demonstrate clear inconsistency with the public convenience and necessity before a proposal can be denied. DM&E maintains that the appropriate questions are whether the project would benefit shippers more than hurt them, put other carriers at insurmountable risk, or otherwise do more harm than good to the nation's transportation system.

DM&E claims that the proposed project would bring major benefits to its existing shippers, to coal utilities and mines, as well as to shippers more generally by improving the nation's rail infrastructure. DM&E also asserts that this project promises significant benefits for communities along DM&E's existing and proposed future lines, and environmental benefits that

⁹(...continued)

He states that, even if the project appeared to be financially viable, it would create a cost structure for DM&E that would invite its competitors to drive it to insolvency, and summarizes that "construction of the project as proposed is ill-advised. DM&E's pursuit of the project likely will jeopardize its ability to provide even its existing, limited service." V.S. Nelson, at 5.

¹⁰ The Burlington Northern and Santa Fe Railway Company and the Union Pacific Railroad Company, respectively.

would largely or fully offset the negative environmental impacts that might be caused due to construction and operation of the line.

DM&E claims that its entry into the Basin would bring approximately \$236 million in annual public benefits, as well as additional unquantifiable benefits. Fewer resources would be consumed in moving PRB coal, for example, because the new DM&E routes include both shorter rail distances and shorter vessel distances in comparison to existing routes, and because DM&E's incremental costs per ton-mile over those shorter distances are lower than the ton-mile costs of BNSF and UP. These savings account for \$202 million of the total. DM&E predicts that an additional \$34 million in public benefits would result from railcar cost savings due to cycle time¹¹ improvements and railcar pooling.

Beyond these quantifiable benefits, DM&E claims that its proposed construction would introduce the benefit of effective competition for the first time at seven plants; would enable utilities to reduce some of the \$200 million that they now tie up in PRB coal stockpiles; would add 50-100 million tons of sorely needed PRB coal-transportation capacity; would enable PRB mines to operate more efficiently; and would result in improved service for non-coal DM&E shippers.

These benefits would represent major public gains in any transportation market, DM&E argues, and, as the widespread shipper support for this project attests, they are particularly welcome in the PRB transportation market where service on UP and BNSF has been slow and erratic for much of the past 6 years.¹² The public benefits, DM&E asserts, come from the reductions in real resource costs which it maintains would result from this project.

¹¹ Cycle time refers to the time it takes coal unit trains to go from the originating mine to the utility and back to the mine.

¹² As an example of this, DM&E cites a survey conducted between December 1994 and October 1995 by the Fieldston Company and published in Fieldston's Coal Transportation Report, that showed cycle times for PRB coal trains were both high and erratic. Cycle times in DM&E's core market were almost 60% above 1992 levels in December of 1994, dropped to slightly less than 10% above 1992 levels in February of 1995, and then immediately rose to more than 40% above 1992 levels in March of 1995. Some cycle times in the core market were 100% above 1992 levels. More recent surveys show some improvement in cycle times, but they still remain higher than for 1992. These survey results, DM&E maintains, illustrate the inadequacies in service provided by BNSF and UP. See Reply Verified Statement (R.V.S.) of Charles E. Mann, at p. 77.

Contrary to the Coalition's assertions, DM&E claims that there is tremendous support for this project and, in fact, uniform support for the project among those with a direct interest in the transportation issues. This includes overwhelming support from DM&E's existing shippers, from coal and other shippers and their organizations, and from DM&E's employees. DM&E claims that this project would not harm existing shippers; rather, it states that it represents the best and possibly only hope of efficient continued rail service for these shippers over the long run. DM&E attaches a petition and letters of support from shippers representing 93% of DM&E's 1997 originated and terminated freight revenue (88% by carload). These shippers, DM&E claims, argue that this project would preserve and enhance their rail service, and they urge the Board to promptly approve DM&E's application. The shippers assertedly recognize that DM&E's existing lines need to be rebuilt, and that the existing traffic base on those lines is insufficient to support such a major project.¹³

DM&E maintains that its existing shippers are in no way threatened by this project. DM&E argues that the potential impact on these shippers is the only finance-related determination that the Board need make.¹⁴ Once the project is constructed, DM&E's ability to maintain essential rail service turns on whether it can cover its costs, including operating expenses, fixed charges and outlays for needed capital.

DM&E claims that it would generate revenues far in excess of ongoing needs and that it would be financially able to maintain quality rail service at annual coal volumes of a mere 27 million tons, one third less than it forecasts for its startup year, and 63% less than it projects for

¹³ In support of this observation, DM&E submits the verified statement of Mr. David Levy, who concludes that rebuilding is essential "to sustain operations in the long term," and that "[i]f maintaining rail service throughout South Dakota and southern Minnesota is a significant part of the STB's consideration, this project must be approved." Levy V.S. at 5.

¹⁴ The Board's duty, DM&E argues, is to protect the public interest; it need not protect participants in financial markets, citing Tongue River R.R.-- Rail Construction & Operation-- Ashland to Decker, Montana, STB Finance Docket No. 30186 (Sub-No. 2) (STB served Nov. 8, 1996) (Tongue River), at 14:

The purpose of the financial fitness test is not to protect the carrier or those who elect to invest in the proposed project, but, rather, to protect existing shippers from carrier financial decisions that could jeopardize a carrier's ability to carry out its common carrier obligation to serve the public. [citations deleted].

Accordingly, DM&E concludes there is no need for the Board to be concerned about potential investors in the project, or to determine if the project will ultimately be built.

2007.¹⁵ Apart from Coalition witness Nelson's coal rate and volume projections, which DM&E criticizes as totally unrealistic, DM&E argues that the Coalition does not materially dispute the financial strength of the expanded and extended coal railroad. The effect of all of the Coalition's witnesses' financial assessments, DM&E claims, would still leave the railroad substantially cash positive every year of the forecast period and with cumulative positive cash flow of \$717 million after 6 years of operation.¹⁶

Even under the extremely unlikely Coalition "disaster scenario" of a DM&E bankruptcy, DM&E argues that it is highly probable that rail service to existing shippers would be maintained. The going concern value of a reorganized DM&E, the railroad claims, would be about three times its estimated net liquidation value after completion of this construction project. Therefore, another party would undoubtedly come forward to provide rail services profitable to it due to the low acquisition cost of a bankrupt DM&E's assets.

DM&E also maintains that its operating plan is sound and would result in highly reliable and safe service. DM&E would operate with greater speed, safety and reliability in carrying PRB coal than either UP or BNSF, it claims, and would have both significant operating and technological advantages over these carriers. Further, DM&E says, the Board need not be concerned with the ability of DM&E's connections to carry PRB coal, because DM&E's east-end connections are established and all affected carriers indicate that they are eager to move coal on terms that they believe would be profitable to them. At these connections, DM&E would have various alternative routings to each of its target markets. Contrary to the Coalition's claims, there are no substantial barriers to moving coal traffic between DM&E and its connecting carriers, and nothing precludes DM&E from offering rate quotations for coal movements from the PRB to destinations with any of these connecting carriers.

WCTL notes that the Coalition does not include any evidentiary support for its arguments regarding loss of service to existing shippers, while numerous letters of support for DM&E's application have been submitted from its existing customers and potential customers, none of whom express concern about potential loss of service. DM&E's customers, WCTL claims, are supportive of the application as a means of maintaining and improving DM&E's existing service.

¹⁵ See R.V.S. of Kurt V. Feaster, DM&E's Chief Financial Officer, at 2, and at 9-10.

¹⁶ Ibid. at 4.

WCTL also claims that there is significant public demand¹⁷ or need for this construction project, and that the transaction would result in downward pressures on rates, demonstrable service improvements and efficiencies, and an increase in the capacity of the national rail system. The project would also assertedly increase incentives for UP and BNSF to be better and more responsive rail service providers and marketplace competitors. WCTL points out that, collectively, the Coal Consumers purchase well over 100 million tons of western coal on an annual basis, most of it PRB origin coal. The Coal Consumers firmly believe that an additional marketplace competitor is necessary to meet growing PRB coal demand -- both from a rate and a service standpoint.

WCTL claims that present competition for PRB transportation service is not nearly as vigorous as the opponents of the transaction would have the Board believe. WCTL argues that, if there were adequate competition in the PRB coal transportation service market, none of the utilities would openly support DM&E's application. The DM&E project would establish another PRB transportation competitor, which should have a positive impact on competition, rates, and service, and by approving the proposed transaction, the Board would allow the marketplace -- not the government -- to determine whether a third competitor can succeed. If, as the opponents contend, there turns out to be a lack of public demand for the proposed line, it ultimately would not be built.

Finally, WCTL maintains that this construction would help remedy existing PRB rail system capacity constraints and benefit all PRB coal users by the addition of significant new capacity to the western coal transportation system. The Board, WCTL argues, need only look to the recent serious UP service problems in the West, and the severe pressures on the entire western rail system caused by the UP situation, to see that additional PRB coal-carrying capacity is necessary. According to WCTL, access to the PRB by an additional and independent rail carrier would assist in mitigating UP's and BNSF's capacity shortcomings, and thereby improve rail system reliability.

¹⁷ WCTL also argues that the lack of shipper contractual commitments for DM&E's proposed service at this early stage of its project should not impede Board approval of this application. As a matter of prudent business practice, WCTL asserts, utility managers will wait until transportation service is authorized before seeking out the new service. DM&E's proposed venture is substantial and it would need to secure service commitments prior to commencing construction; if there are no shipper commitments, there will be no project funding and the project would not be undertaken. WCTL maintains that, if DM&E's proposal to access the PRB transportation market is successful, there is every reason to anticipate that utilities would utilize its services.

In reply, the Coalition argues that much of DM&E's evidence contradicts positions that DM&E took in its original filing. For example, MSC maintains that, in his original verified statement, DM&E Witness Mann expressly excluded from his DM&E coal traffic estimates traffic involving what he called "Additional Markets" outside of the "DM&E Core Market Area." In his reply filing, however, Mr. Mann claims that DM&E could obtain 20 million tons of coal traffic annually from the Additional Markets. In reality, the Coalition says, DM&E would not be able to obtain any significant coal business out of the Additional Markets. The Coalition maintains that DM&E's route to the plants in the Additional Markets is typically hundreds of miles longer than the BNSF and UP routes, and DM&E would have no competitive advantages to offset the circuitry of its route. Mr. Mann's attempt to reach outside the DM&E's core market, the Coalition argues, results in the identification of traffic that DM&E is ill-suited to serve. The Coalition concludes that there is no realistic prospect that DM&E would ever handle more than an incidental share of such traffic, or that such traffic would yield a measurable revenue contribution for DM&E.

MSC also argues that many of the supposed public benefits DM&E claims would result from the project are illusory because they depend on DM&E operating with greater efficiency than BNSF and UP, which would not be the case. The Coalition says that other claimed benefits disappear or are sharply reduced when corrections are made for Witness Mann's errors in route mileages, his failure to take account of the role of Montana PRB coal in parts of the Upper Midwest, and his omission of the costs of necessary build-outs.¹⁸ If the DM&E project were built, the Coalition maintains, it would result in large public detriments, not benefits, because the construction would represent a huge misallocation of resources to an unnecessary rail line extension. If, for example, a need develops for additional capacity to carry PRB coal, the most effective way to provide such capacity, MSC claims, would be for BNSF and UP to make selective improvements to their PRB lines.

The Coalition also questions DM&E's new sensitivity study, claiming that it is not a sensitivity study at all because it does not test DM&E's prospects under adverse circumstances. The assumptions used in the "sensitivity" study are overly-optimistic, according to MSC; they are just not as overly optimistic as DM&E's original assumptions. This fact allegedly confirms the Coalition's position that DM&E has to rely on unrealistically favorable assumptions to project that its proposed line extension could be a financial success. In addition, the Coalition maintains that, even under the optimistic assumptions of its so-called sensitivity analysis, DM&E's own projections show that it would need \$87.8 million in additional equity funding.

¹⁸ Build-outs are connecting tracks that would need to be constructed to permit DM&E to serve a particular shipper.

MSC argues that DM&E improperly compared BNSF and UP costs to its own expected costs because the DM&E projections Mr. Mann uses reflect the efficiencies of unit train operations, but Mr. Mann compares those costs to BNSF and UP system average costs. System average costs, MSC claims, do not reflect the efficiencies that these railroads enjoy in handling PRB unit coal trains, and which therefore would not impose a floor on their ability to engage in rate competition with DM&E.¹⁹ Against effective BNSF and UP competition, MSC asserts, DM&E could not dominate the PRB coal market as it would have to do to justify the huge investment needed to reach the PRB.

Finally, the Coalition also renews its arguments that DM&E's operating plan is not feasible, claiming that DM&E has shifted positions on certain important considerations. This allegedly not only undermines DM&E's claim that its high efficiency would give it a competitive advantage over BNSF and UP, but also leaves unresolved concerns about safety.

We note that we also continue to receive letters and comments raising myriad environmental concerns about this project. These will be addressed in the ongoing environmental review process in this case.

PRELIMINARY MATTERS

ALJ Appeal. Pursuant to a protective order issued on behalf of the Board by Administrative Law Judge Joseph R. Nancy (see Decision served Aug. 5, 1998), various information submitted in this proceeding was labeled "confidential" or "highly confidential." The Coalition filed a motion to declassify this information on September 4, 1998, which was orally denied by Judge Nancy on November 3, 1998 (written decision served November 12, 1998). The Coalition appealed this decision to the Board on November 12, 1998, and DM&E replied. We are denying MSC's appeal.

Interlocutory appeals from discovery decisions issued by Administrative Law Judges are governed by the strict standard of 49 CFR 1115.1(c), which states that "Such appeals are not favored; they will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice." The Coalition has not satisfied this standard.

¹⁹ MSC (R.V.S. White) argues that Mr. Mann's conclusion that BNSF's and UP's long-run incremental costs are approximately 8.0 mills per ton-mile is incorrect insofar as unit coal train traffic is concerned, and, as a consequence, his conclusions regarding the lowest feasible rates based on comparisons of these costs to those of DM&E are also invalid. In particular, the Coalition claims, the rate floor for BNSF and UP on unit coal train traffic is likely lower than the 8.25 mills per net ton-mile which Mr. Mann assumes.

In previous decisions, when considering a request to make public certain confidential information filed under seal, we have focused on whether a lower level of classification of material as confidential is needed to allow a party to make its case:

We resolve any doubts as to the need for confidentiality in favor of protecting the asserted confidentiality unless the opposing party can show that the removal of the designation is necessary for it to make its case, to argue an appeal adequately, or to satisfy a statutory goal.²⁰

Here, the Coalition contends that DM&E's classified documents should be made available to the public so that full consideration can be given to them. Specifically, it claims that the protective order prevents members of the public from learning of flaws in the application which make the project contrary to the public interest. The Coalition argues that, because it is the Board's statutory role in this case to determine what is in the public interest, it is ". . . inappropriate for crucial evidence . . . to be held secret from the public" (Appeal at p. 3). However, the documents are already in the record before us, and we can consider them and give them the weight we deem fit. Further, appellant has complete access to these documents and has not shown any injury to itself from Judge Nancy's denial of its request and maintaining DM&E's designations of "Highly Confidential" and "Confidential." Public disclosure is thus not needed either to assist the appellant in making its case or to assist us in our deliberations on the merits of the proposed construction. The Coalition apparently is arguing for some general right of the public to the classified information, but no such right exists.

²⁰ See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail, Inc., and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 68 (STB served Feb. 23, 1998), quoting Arizona Public Service Company and Pacificorp v. The Atchison, Topeka and Santa Fe Railway Company, No. 41185 (STB served July 29, 1997), slip op. at 4-5. (Motion objecting to confidential designation denied because movant's counsel does not need to share confidential information with carrier's management in order to make its case). See also Lower Colorado River Authority and City of Austin, TX v. Missouri--Kansas--Texas Railroad Company, No. 40155 (ICC served May 24, 1988), slip op. at 1. (Motion for leave to disclose protected material, including construction plans, denied where movant "failed to demonstrate why it is essential for its employees to review the confidential documents in the preparation of its reply").

The decisions cited by appellant are not persuasive.²¹ In those proceedings, it was found that declassification of limited amounts of information was necessary to enable the parties to present their case adequately or for the agency to reach its decision. Here, however, the challenged material consists of information to which both the Coalition and the Board already have complete access, and the appeal is based on the questionable premise that “the public” should also have this access. There is, however, no right of public access to information one party merely believes should be made public so that “the public generally” can “understand and evaluate” the proposal. Rather, in order to encourage free and open discovery, there is a right to have confidential information remain so, absent some overriding public policy requiring that that information be divulged. The Coalition has not shown that disclosure of the classified information is necessary to serve any overriding public policy. In this situation, we are not inclined to overrule Judge Nancy’s ruling that the documents must remain under seal. As noted, the standard for overturning a judge’s discovery decision is a strict one, and appellant has clearly failed to meet it.

We note however that, in spite of the protective order and our desire to honor the parties’ requests for confidentiality, we will refer to this confidential information to the extent necessary for clarification and to explain our decision rationally.

Scope of STB Jurisdiction. Various parties, including South Dakota’s Governor and its Attorney General, as well as Olmsted County, MN, and individual opponents Fred R. Seymour

²¹ The Coalition claims that in past cases the Board has declassified documents and other information for which a confidential status has been claimed, where the information was not commercially sensitive or public interest considerations outweighed any claim for limitations on disclosure. It cites CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail, Inc., and Consolidated Rail Corporation, STB Docket No. 33388, Decision No. 78, (STB served May 8, 1998) (CSX/NS No. 78); Union Pacific Corp. -- Control & Merger -- Southern Pacific Rail Corp., STB Finance Docket No. 32760, Decision No. 39 (STB served May 31, 1996) (UP/SP No. 39); Santa Fe Southern Pacific Corp. -- Control -- SPT Co., 2 I.C.C.2d 709, 805 and n.98 (1986) (SFSP). These decisions do not support the Coalition’s claims here. In CSX/NS No. 78, the Board merely sustained, as not constituting a clear error of judgment or manifest injustice, an ALJ ruling allowing the applicants there to refer in oral argument before the Board to a limited portion of a contract that another party had selectively declassified in its brief. In UP/SP No. 39, the Board again merely sustained an ALJ’s ruling that another party could use in its brief and oral argument a “snippet” out of a single confidential document which the Board regarded as “not commercially sensitive in the usual sense.” In SFSP, the ICC merely disclosed in its written opinion limited portions of a single document as to which the author had, without objection, been subject to public cross examination.

and Dwight L. Adams, argue that the application is incomplete because it does not address the entirety of the reconstruction project, and that the proposed rebuilding of DM&E's existing line, as well as the new construction, is subject to the Board's jurisdiction and requires approval under section 10901.

It is well settled, however, that a rail carrier merely planning to improve or upgrade its existing lines does not require our approval. See City of Detroit v. Canadian Nat'l Ry., 9 I.C.C.2d 1208, 1216 (1993), petition for review denied sub nom. Detroit/Wayne County Port Auth. v. ICC, 59 F.3d 1314 (D.C. Cir. 1995); City of Stafford, Texas v. Southern Pac. Transp. Co., Finance Docket No. 32395 (ICC served Nov. 8, 1994) (1994 ICC LEXIS 216), aff'd, 69 F.3d 535 (5th Cir. 1995). The fact that a carrier plans to pursue an upgrade in conjunction with construction activity that requires Board approval under 49 U.S.C. 10901 does not alter this. See Auburn v. STB, 154 F.3d 1025, 1033 (9th Cir. 1998), pet. for rehearing pending (Auburn). The Board cannot make any specific determinations on the transportation merits of the rebuilding portion of this project.

Nonetheless, consistent with our approach in similar cases, the Board's environmental review of the project will assess potential environmental impacts resulting from increased rail operations over the portion of DM&E's line that would be rebuilt. See Burlington Northern Santa Fe Corporation, BNSF Acquisition Corp., and Burlington Northern Railroad Company--Control--Washington Central Railroad Company, STB Finance Docket No. 32974 (STB served Oct. 25, 1996), aff'd, Auburn. Moreover, the U.S. Army Corps of Engineers (the Corps) is a cooperating agency with the Board in the environmental review process here (see 40 CFR 1501.6). Part of the Corps' responsibility under the National Environmental Policy Act (NEPA) and the Clean Water Act involves analyzing potential impacts to wetlands on DM&E's existing line that would result from the proposed rebuild. In order to accommodate the Corps, and to avoid the Corps' need to issue its own separate NEPA documents, the EIS in this instance will fully assess the environmental impacts that would result from construction on DM&E's existing line, in addition to assessing impacts from increased rail operations over the current system. Thus, the environmental record in this case will contain information on the rehabilitation and upgrade of DM&E's existing line.

DISCUSSION AND CONCLUSIONS

This construction application is governed by 49 U.S.C. 10901(c), which specifies that:

(c) The Board shall issue a certificate authorizing activities for which such authority is requested in an application filed under subsection (b) unless the Board finds that such activities are inconsistent with the public convenience and necessity. . . .

While the statute does not define “public convenience and necessity,” a three-part test has evolved to evaluate the public convenience and necessity, which requires a determination of whether: (1) the applicant is financially fit to undertake the construction and provide service; (2) there is a public demand or need for the proposed service; and (3) the construction project is in the public interest and will not unduly harm existing services.²² Public convenience and necessity is also evaluated in light of the rail transportation policy of 49 U.S.C. 10101.²³ It has also been held that the interests of shippers are matters of substantial importance in determining the question of public convenience and necessity in railroad construction applications.²⁴

There is no dispute here between the parties as to the three-part test to be used in determining the public convenience and necessity. In fact, both proponents and opponents specifically refer to the three-part test. However, the parties do disagree as to the meaning of the recent changes made to section 10901 in the ICC Termination Act of 1995, Pub. L. No. 104-88 (ICCTA). The Coalition argues that these changes make no substantive modification to the Act, while DM&E and WCTL maintain that the changes were intended to facilitate a finding that a construction project satisfies the public convenience and necessity criteria.

It is clear that the current standard favors construction applications to a greater extent than the original standard applied under section 1(18) of the Interstate Commerce Act, which required railroads to show that the public convenience and necessity “require or will require the construction” of a new line.²⁵ This provision was changed in the Staggers Rail Act of 1980, Pub. L. No. 96-448, where section 10901 was amended to make it easier for a proposal to be found in the public interest by providing that the public convenience and necessity need only “permit” the construction, and not necessarily “require” it, as in the prior standard.

²² See Tongue River.

²³ Indiana and Ohio, *supra*, citing Louisville and Jefferson County Port Authority and CSX Transp., Inc. — Construction and Operation Exemption, 4 I.C.C.2d 749 (1988). These decisions were issued when the predecessor of section 10101 (former 49 U.S.C. 10101a) was in effect.

²⁴ Burlington Northern, Inc. — Construction and Oper., 348 I.C.C. 388, 400 (1976), citing Chesapeake & O. Ry. Co. Construction, 267 I.C.C. 665 (1947).

²⁵ In Pub. L. No. 95-473, 92 Stat. 1337, enacted on October 13, 1978, section 1(18) of the Interstate Commerce Act was codified at 49 U.S.C. 10901. Although the wording of the provision was slightly changed, the codification did not change substantive law.

The Coalition argues, however, that the ICCTA made no change to the statute with respect to the construction of rail lines, citing H. Rep. No. 104-422, at 179 (1995).²⁶ Thus, according to the Coalition, it remains DM&E's burden to demonstrate that the PRB line extension it proposes is consistent with applicable public convenience and necessity requirements.

We disagree. First, the Coalition misquotes the statute as saying the Board "should," rather than "shall," approve a project that is not inconsistent with the public interest. The change in the statutory language to requiring approval unless the Board finds that approval is inconsistent with the public convenience and necessity is clear on its face. The Coalition claims that the legislative history establishes that Congress intended no substantive change to existing law in the ICCTA. However, the legislative history merely states that the Board retains jurisdiction over railroad construction, which is not disputed here. It does not follow, however, as the Coalition argues, that the burden of proof has remained the same.

We agree with DM&E and WCTL that Congress intended to facilitate rail construction by amending section 10901 in the ICCTA by shifting the emphasis from whether a project is consistent with the public convenience and necessity to whether the project is inconsistent with the public convenience and necessity. Under the revised statute, proposed rail construction projects are to be given the benefit of the doubt. If they are not found to be inconsistent with the public interest, then they are to be approved. As the Board said in Class Exemption for the Construction of Connecting Track Under 49 U.S.C. 10901, 1 STB 75, 79 (1996), "there is now a presumption that construction projects will be approved." The changes to section 10901 signal a change from the rationale of earlier decisions that were based on a Congressional emphasis on monitoring railroad construction expenditures to prevent excess capacity.²⁷ Thus, although the statutory criteria of public convenience and necessity remains, the burden of satisfying that criteria has been made progressively easier.

²⁶ In that report, the Conference Committee stated that the amended language made "no change in existing law with respect to the coverage of regulatory authority over construction of rail lines." The Coalition also cites H. Rep. No. 104-311, at 100 (1995), which states that the amended language of section 10901 "retain[ed] the current Federal jurisdiction under former Section 10901 over authority to construct, acquire or operate lines."

²⁷ In one earlier decision, Chesapeake & Ohio Ry. v. United States, 283 U.S. 35, 42 (1931), the Court evaluated the standard of public convenience and necessity, stating that, "[u]ndoubtedly, the purpose of these provisions is to enable the Commission, in the interest of the public, to prevent improvident and unnecessary expenditures for the construction and operation of lines not needed to insure adequate service."

DM&E, however, goes beyond merely arguing that the revised statute modifies the burden of proof by also arguing that the statute “necessarily imposes on opponents of new railroad construction a heavy burden of rebuttal by demonstrating clear inconsistency with the public convenience and necessity.” In this respect, DM&E overstates the effect of the statutory changes. As we explained in our July 16, 1998 decision, the statute merely provides that construction applications shall be granted unless we find that “such activities are inconsistent with the public convenience and necessity.” This means that where opponents have presented credible evidence challenging the elements that make up the “public convenience and necessity” determination (i.e., financial fitness and public demand or need) in a broad proposal such as this, it is critical for the applicant to respond to these allegations.²⁸ In short, although there is now a presumption that construction projects satisfy the statutory standard, the opposition here overcame that presumption by coming forward with credible evidence that required a response by DM&E. Thus, as we stated in our July 16, 1998 decision, even given the more favorable policy toward line constructions evidenced by the recent changes to section 10901, DM&E must still explain with specificity why this rail line is needed and applicant’s financial fitness to carry the project through to completion, given the evidence presented by opponents in response to DM&E’s initial filings.

As noted, the interested parties now have presented additional evidence and arguments on the transportation aspects of this case in response to our July 16, 1998 decision. As we will show, we now have evidence that DM&E would be competitive in a number of markets and, accordingly, that the project is likely to be feasible. Based on all the information now available to us (i.e., the parties filings, including certain DM&E’s workpapers and information obtained through discovery submitted into this record by the Coalition, and other public information) it appears that DM&E would likely be more than a marginal carrier. DM&E also has developed the record significantly, per the admonition in our July 16, 1998 decision, regarding such issues as what it believes the benefits of this project will be to the public, its financial fitness, and the extent of support for the proposal from the existing shippers. Based on the current record, we therefore can find that DM&E’s application meets the transportation criteria of section 10901.

We now turn to our evaluation of the evidence presented to date on the transportation merits of the proceeding.

FINANCIAL FITNESS

The purpose of the financial fitness test, as has often been stated, is not to protect the carrier or its investors; rather, it is to protect existing shippers from a carrier’s proposed actions

²⁸ This is particularly true where, as here, serious environmental concerns have been raised as well.

that could have an adverse impact on the carrier's ability to continue to serve those shippers without detriment to either service or rates. See Tongue River at 14; also see, e.g., Illinois Cent. R. Co. v. Norfolk & W. Ry. Co., 385 U.S. 57, 67 (1966), Texas & Pac. Ry. v. Gulf, Etc., Ry., 270 U.S. 266, 277-78 (1925), Texas and New Orleans R.R. Co. v. The North Side Belt Ry. Co., 276 U.S. 475 (1928). Based on the present record, we conclude that DM&E has met the applicable statutory and regulatory requirements. As noted, however, this determination could change after completion of the environmental review process if, for example, it turns out the cost of any environmental mitigation we impose would be so high that the project ultimately would not be financially viable.

DM&E maintains that it has shown projected revenues sufficient to cover its operating expenses (operating costs, interest expense and tax liabilities) and to provide a return on investment to shareholders. The Coalition, on the other hand, asserts that DM&E would incur losses in each of the first 3 years of operations, and would not realize a profit until 2005.

The parties present conflicting evidence and argument relative to traffic and revenue forecasts, the operating plan, construction costs, financing (interest on debt), and public benefits. MSC does not seriously challenge DM&E's evidence on the impact of the proposed construction on existing shippers, and there are no significant differences between the parties' construction and operating estimates. Further, even though MSC has challenged some of DM&E's engineering and operating plan evidence, it does not restate DM&E's evidence on these issues. There are, however, substantial differences between the parties' traffic and revenue projections, as well as on the proposed financing.

We have conducted a detailed analysis of the parties' evidence relative to DM&E's traffic and revenue projections, operating plan, construction cost, financing, public benefits and impact of the project on DM&E's existing shippers. The differences between MSC's and DM&E's profitability projections are predominately due to: (1) the use of drastically different forecasts of potential coal tonnage that DM&E could capture out of the PRB; (2) rate forecasts; and (3) the use of different interest rates on the debt that DM&E would incur from the proposed construction and rehabilitation.

DM&E develops five different financial scenarios (revenue and profit projections, see summary in Table I below) based on three tonnage and three netback assumptions.²⁹ DM&E's most optimistic tonnage forecast is based on delivering 40 million tons of coal in 2002, increasing to 100 million tons in 2007, while a more conservative forecast assumes that DM&E

²⁹ Netbacks are discussed below in "REVENUES/RATES".

will move from 30 to 75 million tons during the same period.³⁰ DM&E then develops differing average netbacks per ton-mile projections (rates DM&E could potentially charge), the most optimistic of which is for 9.4 mills per ton-mile in 2002, rising to 10 mills per ton-mile in 2007, while the least optimistic ranges from 8.76 mills to 8.99 mills per ton-mile in this period.³¹ DM&E then applies these netback projections to its tonnage projections to calculate four potential revenue streams. The most optimistic of these projections produces a 6-year profit of \$953.5 million, and the most conservative a \$405.6 million profit. In comparison, MSC forecasts a \$2.8 million loss over this 6-year period.

DM&E's final scenario is based on transporting 27 million tons at a 10 mills per ton-mile rate, which it designates as its "break-even" model. It states that this 10 mills per ton-mile average coal transportation rate assumes that DM&E would capture only traffic for which it has the most significant mileage (and therefore competitive) advantages over UP and BNSF, and, thus, movements on which it would realize higher revenue levels per ton-mile.³² All of DM&E's rate and volume assumptions generate earnings streams which show the project to be profitable.

Under its most optimistic financial scenario, DM&E would generate substantial profits (over \$268 million annual profit by 2007)³³, while under its most pessimistic (27 million tons and

³⁰ DM&E also presents a study developed by Schroder & Co. which reduces DM&E's 2007 tonnage by 25% to 75 million tons and reflects DM&E's rate projections. The Schroder study concludes that even under these assumptions, the proposed project would not only be financially viable but would, in fact, result in DM&E achieving rates of return that are higher than those being realized by any of the Class I railroads. See Applicant's Reply Evidence and Argument in Support of Its Application (DM&E Reply), Volume 2B of 2, R.V.S. Mann, Exhibit 1, filed October 5, 1998. There is no independent support for this study.

³¹ DM&E's range of netbacks from 9.4 to 10 mills per ton-mile is based on DM&E and its rail partners charging rate levels which are equivalent to the rates currently being charged by the utilities' incumbent carriers. DM&E's range of netbacks from 8.76 to 8.99 mills per ton-mile is developed based on its premise that incumbent carriers will compete more aggressively with DM&E for all traffic.

³² The estimate of 27 million tons moving at 10 mills per ton-mile is not well explained. We believe it is tied to Table 3 in Witness Mann's reply verified statement that shows DM&E's mileage advantages. However, it could also be derived from Table 14 of DM&E's January 1998 Confidential Offering Memorandum which is found in MSC's Brief, Volume 2B of 2, Exhibit 10, and lists all of DM&E's potential markets.

³³ See R.V.S. of Kurt V. Feaster, Exhibit KVF-1, Page 2 of 11.

an average rate of 10 mills per ton-mile) DM&E would post \$46.9 million³⁴ in annual profit in 2007. On the other hand, MSC's pessimistic scenario forecasts losses through the year 2004, with small profits beginning in the year 2005, reaching \$23.6 million by 2007.³⁵ Thus, even assuming that MSC's pessimistic projections become reality, DM&E would realize profits after the year 2004.³⁶

³⁴ Ibid., Exhibit KVF-2, Page 1 of 8.

³⁵ See V.S. of William W. Whitehurst, Jr., Exhibit WWW-16, Page 2 of 3.

³⁶ Moreover, both parties agree that the more coal that is transported by DM&E, the better the financial results will be for the railroad. This is due to economies of density which lower the marginal cost of each additional ton shipped because DM&E's costs are mostly fixed (interest and debt, plus investment in rail assets, track, ties, ballast, grading, and bridges).

The parties' financial scenarios are summarized in Table I below.

TABLE I
Comparative Tonnage Revenue & Income Projections³⁷
Years 2002-2007

No.	Scenario	Tonnage Level	Average Millage Rates All Tonnages	Total 6-Year Revenue	Total 6-Year Profit or (Loss)
MSC'S SCENARIO					
1	MSC's Tonnage Level and Millage Rates	17 million tons in 2002, rising to 42 Million Tons by 2007	7.89 mills per ton-mile in 2002 declining to 7.52 mills per ton-mile by 2007	\$1.6 billion over the 6-year period	(\$2.8 million) net loss over the 6-year period
DM&E'S SCENARIOS					
2	DM&E "Break-Even" Tonnage Level (Fixed Millage Rates)	27 million tons per year	10 Mills per ton-mile Fixed over all 6 Years	\$1.8 billion over the 6-year period	\$241.7 million net profit over the 6-year period
3	DM&E "Lower" Tonnage Level (Lower Millage Rates)	30 million tons in 2002, rising to 75 million tons by 2007	8.76 mills per ton-mile in 2002 rising to 8.99 mills per ton-mile by 2007	\$2.7 billion over the 6-year period	\$405.6 million net profit over the 6-year period
4	DM&E "Lower" Tonnage Level (Higher Millage Rates)	30 million tons in 2002, rising to 75 million tons by 2007	9.4 mills per ton-mile in 2002 rising to 10 mills per ton-mile by 2007	\$2.92 billion over the 6-year period	\$532.8 million net profit over the 6-year period
5	DM&E "High" Tonnage Level (Lower Millage Rates)	40 million tons in 2002, rising to 100 million tons by 2007	8.76 mills per ton-mile in 2002 rising to 8.99 mills per ton-mile by 2007	\$3.66 billion over the 6-year period	\$743.3 million net profit over the 6-year period
6	DM&E "High" Tonnage Level (Higher Millage Rates)	40 million tons in 2002, rising to 100 million tons by 2007	9.4 mills per ton-mile in 2002 rising to 10 mills per ton-mile by 2007	\$3.95 billion over the 6-year period	\$953.5 million net profit over the 6-year period

³⁷ The rates shown in this table are average rates DM&E would earn across all of its markets. MSC's projections in this table are based on an interest rate on debt of 9.5%, while DM&E's are based on an 8.25% interest rate.

We will now discuss the three principal areas of disagreement between the parties in developing their financial projections.

TONNAGES

Overall Market Traffic Forecast

MSC argues that DM&E's tonnage and rate projections are overly optimistic and asserts that DM&E would only be able to capture 42 million tons by 2007. It accepts DM&E's phase-in percentages over the 2002 to 2007 period,³⁸ estimating that DM&E's 2002 tonnage would be 40% of 42 million tons, or about 17 million tons. MSC also contends that the rate per ton that DM&E would be able to charge in the competitive environment would be lower than the rates projected by DM&E.³⁹ MSC's lower tonnage and rate assumption together with MSC's assumption of a higher (9.5%) interest rate on debt, yields an earnings stream below those presented by DM&E, and losses for DM&E in its early years of operation.

DM&E's forecast of potential traffic it can capture out of the PRB is developed based on an evaluation of individual utility plants' current and future use of Wyoming coal. This forecast is developed based on two assumptions: (1) that in order to comply with Phase II of the Clean Air Act Amendments of 1990 (CAAA 1990), utilities in DM&E's market area would exclusively burn low sulfur Wyoming coal;⁴⁰ and (2) that increased demand for electricity would cause utilities to consume additional coal up to a maximum plant capacity factor of 75%, assuming an average heat

³⁸ DM&E assumes that in each year leading up to 2007 it will capture a percentage of the 100 million tons of coal it projects it will carry in 2007. These percentages are: 1) 2002 - 40%; 2) 2003 - 60%; 3) 2004 - 70% 4) 2005 - 80% 5) 2006 - 90% and 2007 - 100%. Although DM&E offers no support for these percentage phase-ins, MSC does not challenge their use and we accept them on that basis.

³⁹ MSC accepts DM&E's assumption that the lowest feasible rate levels are now at 8.25 mills per ton-mile but contends that productivity improvements in the rail industry will drive carrier costs lower and that rates will follow. We discuss prospective rate levels below.

⁴⁰ DM&E expects that plants not currently burning PRB coal would start burning (convert to) Wyoming coal to meet the CAAA 1990 regulations. It also expects utilities to experience "blend creep" in that more PRB coal is expected to be introduced into a plant's fuel blend to comply with CAAA 1990. DM&E assumes a maximum of 85% of the plants' total burn would be low sulfur PRB coal.

rate of 10,000 BTU/KWH (kilowatt hour) and coal averaging 8,800 BTU/lb.⁴¹ These assumptions would have an impact on the amount of Wyoming coal which must be burned to produce the same megawatt output because Wyoming coal has lower BTU/lb. than coal it would be replacing and, thus, more PRB coal must be burned at plants currently burning higher BTU/lb. coal from central Appalachia, the Illinois basin, Utah, Colorado, New Mexico, and some mines in Montana. DM&E forecasts that its target markets would potentially burn between 250 and 272 million tons.⁴² As an indication that this forecast is reasonable, DM&E submits a total PRB output forecast for 2010 in the range of 530-550 million tons.⁴³

DM&E separates coal burning utilities into three categories: (1) six core markets; (2) two additional markets; and (3) a group of utilities which it considers “market expansion” opportunities.⁴⁴ It calculates the total potential tons that could be burned at each of these utilities,

⁴¹ DM&E supports its assumptions by stating that it expects the growth rate for electricity generated by coal-fired plants in the core market areas to be 2.2% per year, requiring capacity utilization factors to exceed 75% by the year 2010. This capacity utilization factor could be considered conservative because of the possible retirement of a significant portion of the nuclear generating capacity in the area, which would have to be replaced by the next-cheapest generation source (coal) and because coal-fired generation plants that switch to PRB coal would gain a cost advantage over competitors that continue to use higher-cost eastern coals. Because of this cost advantage, plants shifting to PRB coal would gain market share at the expense of those plants whose delivered coal per million BTU is higher than that for PRB coal.

⁴² Plants in DM&E’s target markets currently burn 116 million tons of PRB coal annually. Some of this 116 million tons of coal originates at mines in Montana which DM&E could not serve. However, there is no evidence regarding what portion of the 116 million tons is from Wyoming, coal traffic that DM&E could capture. DM&E projects that plants currently burning Wyoming coal would burn an additional 71 million tons by 2010. Of the plants in DM&E’s prospective market area not currently burning any PRB coal, it projects that 63 to 85 million tons may be burned in 2010.

⁴³ DM&E states that this estimate is for comparison only and lists other forecasters’ estimates in Applicant’s Reply Evidence and Argument in Support of its Application, Volume 2 of 2, R.V.S. of Mann, Table 2. These other forecasts range from 406 million tons to 492 million tons in 2010. DM&E states that the average of all forecasts is 464 million tons.

⁴⁴ DM&E lists its six core markets as: the Great Lakes (power plants served by vessel with rail service to Great Lakes transloading facilities via other railroads); the Upper Midwest Rail (rail-served power plants primarily in Wisconsin and Minnesota); the Upper Mississippi River (power plants served by barge on the upper Mississippi River); the Ohio River (power
(continued...)

based on a 75% capacity factor, heat rate of 10,000 BTU/KWH and 8,800 BTU/lb. coal, and adds the tonnages to determine the potential in each market. To the potential tons that could be used in a market, it applies a projected "market share" to forecast the tonnage it will move in 2007.⁴⁵ Using the yearly percentage phase-in discussed in footnote 38, it then calculates the volume of coal it could move into each market and adds them on an annual basis from 2002 through 2007.⁴⁶

MSC states that DM&E's forecast for total PRB coal usage is much more optimistic than that of the Department of Energy's Energy Information Agency (EIA), which forecasts total PRB production of some 406 million tons in 2010 in its Annual Energy Outlook for 1998. This EIA forecast assumes moderate national economic growth.⁴⁷ Based on the EIA estimate of 406 million

⁴⁴(...continued)

plants served by barge via the Ohio River system with rail service to river docks via other connecting rail carriers); the Illinois River (power plants served by barge via the Illinois River with rail service to river docks via other connecting rail carriers); and the Chicago Gateway (power plants served by rail in the Chicago/Gary area, and via connections at Chicago). Because the Illinois River market is relatively small (4.8 million tons), it will be considered as part of the Chicago Gateway market. See MSC Reply Brief, V.S. Nelson, at footnote 6. The two additional markets are the Lower Mississippi River and Memphis Gateway markets. A listing of the market expansion opportunities (16 plants) can be found in MSC's Brief Exhibit 10, Table 14.

⁴⁵ DM&E's projected market shares vary, depending on whether it has a competitive advantage in the market or is an equal competitor. In the Great Lakes and Upper Midwest Rail markets, DM&E claims to possess a mileage advantage over the incumbents and projects to gain 62% and 61% share respectively. In the upper Mississippi River Market, DM&E also claims a mileage advantage and a 43% share of the market. In its other core markets, Chicago Gateway/Illinois River and Ohio River, DM&E indicates that it would be an equal competitor and assumes an equal share of these markets with the two incumbents, i.e., 33% each.

⁴⁶ MSC's Brief and Evidence in Opposition to Dakota, Minnesota and Eastern Railroad Corporation's Application, (MSC's Brief), Volume 2B of 2, Exhibit 10, Table 4A of the Fieldston Report, page 31 contains a market by market breakdown.

⁴⁷ DM&E states that the EIA forecasts are based on a large number of assumptions placed in that organization's computer modeling program, some of which are questionable. For example, DM&E contends that the average price of PRB coal used in EIA's model is based on all prices paid, including prices contained in older contracts, which tends to inflate the price used in the model above current price levels. It says the 1996 price used in the EIA model was \$6.33, which is \$1.83 above the current market price (\$4.50) for 8,800 BTU/lb. DM&E claims that, due to the use of such questionable assumptions, EIA's model underestimates total growth in PRB

(continued...)

tons, MSC scales back DM&E's estimate of PRB tons moving to its target markets to 149 million tons, down from DM&E's 250 to 272 million tons. Because of potential rail competition from incumbents, utilities having to "derate" plants to burn low sulfur PRB coal,⁴⁸ and lessening demand for lower sulphur dioxide emissions because of the availability of accumulated emission allowances from plants below CAAA 1990 standards, MSC believes this estimate to be a "reasonably optimistic forecast for planning purposes."⁴⁹

MSC supports its lower tonnage estimates by arguing that DM&E would face fierce competition from incumbents and does not have an advantage over them other than a limited mileage advantage in certain markets. It states that the technology DM&E proposes to use already exists at UP and BNSF, and that DM&E will not be able to offer speed or reliability advantages except where it has a mileage advantage. It also argues that DM&E does not appear to adequately account for the limitations and uncertainties imposed by: (1) the competitive response to a plant's potential build-out; (2) the use of barge service to compete with direct rail service; (3) the use of three or four carrier routings to replace single line or two carrier service; and (4) the unlimited substitution of Wyoming PRB coal for higher BTU Montana, Hanna Basin or central Appalachian coals without consideration of derating issues (again, the adverse effects, if any, of changing to PRB coal without modifications to the plant's boilers).⁵⁰

The parties' methods for developing DM&E's potential tonnages are based on different methods of estimating future tonnages. DM&E develops a plant-by-plant estimate of potential PRB tons using a specified formula which produces a market-by-market forecast. Based on this forecasting technique, DM&E predicts a total market of 530 to 550 tons for PRB coal in 2010,

⁴⁷(...continued)
coal production.

⁴⁸ Derating of a plant reflects the fact that the plant was not built or modified to burn low BTU coal. Thus, the plant's efficiency deteriorates as more low BTU PRB coal is burned, resulting in less electricity being produced. A plant may be derated from 5% to 20% of its original megawatt capacity.

⁴⁹ MSC's Brief, Verified Statement of Michael A. Nelson, pages 8-9. Exhibits 1 and 2 shows how these tonnages were derived.

⁵⁰ MSC states that, where build-outs are threatened, incumbents would respond by proposing lower rates that make a build-out uneconomical. It also claims that barge service cannot compete with direct rail service. Where DM&E assumes conversion of a plant to PRB coal, MSC contends that, if after 14 years of two-carrier competition in the PRB, those plants have not yet converted to burn this coal, they must face economic barriers which preclude them from doing so.

with 250 to 270 tons used in its target markets. MSC, on the other hand, uses EIA's national forecast of PRB growth of 406 million tons in 2010 and then scales down DM&E's market projection to 149 million tons based on projections of growth in the market areas. MSC does not directly address DM&E's assumptions regarding average plant capacity factor, blend creep or conversion, derating of plants when using lower BTU coal and increasing power requirements in the core markets, other than to comment that they are too optimistic.⁵¹ Nor does MSC respond to DM&E contention that EIA's high average weighted price of all PRB coal does not reflect the current prices being charged for Wyoming PRB coal (\$4.50), but simply accepts without question EIA's forecast.⁵²

As DM&E points out, the average of all forecasts for PRB tonnage is 464 million tons, and we can expect future demand for PRB coal to fall within the range of all forecasts presented to us in the parties' evidence. Thus, MSC's tonnage forecast must be viewed as an overly conservative estimate of DM&E's prospective market. Because DM&E offers better support for its plant-by-plant, market-by-market analysis of potential use of Wyoming PRB coal in its target markets, we accept DM&E's aggregate PRB tonnage estimates as the best evidence of record, except as noted.⁵³

We now address the parties' market share evidence.

Market Share Forecasts

⁵¹ While DM&E does not cite any support for its major assumptions of 75% capacity factor or growth in the core markets, EIA's Challenges of Electric Power Industry Restructuring for Fuel Suppliers, September 1998, pages 113 and 114, forecasts that under EIA's full competition scenario, electric sales of utilities in the Mid-America Interconnected Network (MAIN) and Mid-Continent Area Power Pool (MAPP) (a large part of DM&E's core market area) are projected to increase from 1.2% to 1.8% per annum and coal-fired plants capacity utilization rates are expected to increase from 57% and 60%, respectively, to a range between 77% to 80% in 2010. In MAIN, EIA projects potential early retirement of four nuclear generators and construction of four gigawatts of new coal fired capacity. This would obviously result in an increase in the amount of coal shipped into this market.

⁵² MSC offers no other evidence in support of its 149 million ton forecast.

⁵³ See MSC's Reply, Exhibit 10, Table 7. Total potential consumption in the target markets is 250-272 million tons.

Ohio River Market.⁵⁴ MSC concedes DM&E a 33% market share in the Ohio River market compared to DM&E's proposed 35% share. In its supplemental statement, the Coalition argues that DM&E has misrouted BNSF and UP movements to the Ohio River through Chicago because those carriers have more direct routes to barge facilities on the Ohio River,⁵⁵ but it does not restate DM&E's market share.

We agree that routing of BNSF and UP coal movements through Chicago overstates DM&E's competitiveness in this market. Our review of these routes shows that both BNSF and UP have shorter routes to the Ohio River market than would DM&E.⁵⁶ Therefore, since MSC did not restate a tonnage projection for this traffic, we will accept MSC's original contention that DM&E would be able to capture only 33% of this market. MSC does not afford a basis for reducing DM&E's share of this market below this level and, hence, we will not attempt to do so.

Chicago Gateway Market.⁵⁷ MSC acknowledges that DM&E's mileage to the Chicago Gateway market is the same approximate length as that of BNSF and UP. MSC presents evidence that breaks this market down by segments (Illinois, Indiana and Michigan's central peninsula), claiming that DM&E will gain a 20%, 25% and 30% percent share, respectively, in these segments versus DM&E's forecast share of 33% overall. MSC contends that DM&E's competitive advantages here are minimal because it would have to market low BTU Wyoming coal against high BTU western coal and because its joint line service with other carriers would compete with UP and BNSF single line service. In the Illinois market, MSC contends that DM&E cannot be competitive because these utilities use higher BTU western coal.⁵⁸ MSC also claims that DM&E

⁵⁴ DM&E's forecast tonnage for this core market is 55 million tons in 2010. See MSC's Brief, Exhibit 10, Table 14.

⁵⁵ MSC states that UP's 1231-mile route to the docks at Metropolis, IL is almost 200 miles shorter than DM&E's 1400-mile interline route with the Illinois Central to Paducah, KY (located just across the Ohio River from Metropolis).

⁵⁶ The movement of coal unit trains is based on the routing for coal/bulk in ALK Associates PC Rail for Windows, Version 5.0 routing program.

⁵⁷ DM&E's forecast tonnage for these combined markets is 79 million tons in 2010. See MSC's Brief, Exhibit 10, Table 14. As noted, this tonnage includes the 4.8 million tons forecast for the Illinois River market.

⁵⁸ For example, MSC claims Commonwealth Edison's plants use a significant amount of high BTU western coal. Review of data from Table 24 in EIA's Cost and Quality of Fuels for Utility Plants, 1997 Tables, (EIA Table), May 1998 shows that the Kincaid plant used a blend of
(continued...)

would be at a disadvantage in the Chicago market because those plants are currently served via single or two-line haul versus DM&E's proposed three-or-four-carrier haul. Inclusion of additional carriers, MSC argues, makes for less competitive circumstances.⁵⁹ DM&E responds that the extra interchange would not be a significant disadvantage because the unit trains would operate in run-through service at Winona, which means that there would simply be a change of crews at that point.⁶⁰

In the Indiana segment, MSC again maintains DM&E would face a competitive disadvantage for the same reasons as in Illinois: additional interchanges and use of higher BTU non-PRB coal.⁶¹ DM&E replies that in 1996 these plants used over 50% PRB coal.⁶²

⁵⁸(...continued)

two-thirds high BTU western coal and less than 5% low BTU PRB coal. DM&E replies that the Kincaid plant is scheduled to convert to all PRB coal in 1999, but it remains unclear whether the coal it will use will be low BTU from mines the DM&E would serve or higher BTU coal from mines which DM&E would not serve. Because Wyoming coal tends to have a lower delivered cost per million BTU, we believe the Kincaid plant could burn lower BTU coal from mines DM&E will be able to serve and that the DM&E could therefore compete for the plant's coal needs. MSC also asserts that Commonwealth Edison's Stateline plant has used a 95% blend of high BTU Wyoming coals. Data from EIA's 1997 Table 24 shows MSC's statement regarding the Stateline plant to be true, but MSC's overall inference misleading. Commonwealth Edison's plants use of higher BTU western coal accounted for 25% of their total of 19.8 million tons. The majority of the remaining coal received was lower BTU PRB coal, with less than .5 million tons being higher BTU non-Basin coal.

⁵⁹ As an example, MSC states that Electric Energy Inc.'s Joppa plant has BNSF single line service where DM&E plans a three-carrier move. In its supplemental evidence, MSC asserts that DM&E treats the Joppa plant as if BNSF and UP would serve it via the Chicago gateway. However, UP's mileage from the PRB to this plant via Kansas City is approximately 1225 miles, compared to the 1445 miles required to reach this plant using DM&E's routing. This plant burns 4.7 million tons of Wyoming PRB coal annually.

⁶⁰ DM&E states that carriers with which it has had contact express interest in run-through service.

⁶¹ Specifically, it states that Northern Indiana Public Service Co.'s (NIPSCO) plants all use high BTU coal.

⁶² Review of EIA's 1997 Table 24 shows that 13% of these plants' total 1997 burn of 7.9 million tons was high BTU Wyoming coal, 48% was low BTU PRB coal from mines DM&E

(continued...)

In the Michigan market, MSC claims that DM&E would be at a competitive disadvantage because it would provide a three-carrier haul, whereas incumbents can serve the plants with a two-carrier haul. According to MSC's evidence, DM&E would be at a disadvantage on 46.1 out of approximately 89 million tons in the Chicago Gateway market, mainly because of multiple carrier movements and preference for high rather than low BTU coal.

We do not believe the extra interchange between DM&E and a connecting carrier would create a significant disadvantage for DM&E in this market.⁶³ Run-through and DM&E's time slot service should allow efficient interchange and crew changes and permit DM&E to be an equal competitor in this market. While some high BTU western coal is used in this market, there is a greater amount of low BTU PRB coal burned and there is a large potential for growth. Therefore, DM&E's estimate of a 33% market share as an equal competitor in this market⁶⁴ is supported by the record, and MSC's arguments have not shown that DM&E's supporting evidence is flawed.

Great Lakes Market.⁶⁵ MSC asserts that this market will receive 32 million tons of coal in 2010, of which DM&E would get a 30% share. MSC claims that DM&E would capture a smaller than proportionate share of this market because: (1) Detroit Edison's Belle River, St. Clair and Trenton Channel plants and Consumers Power's Weadock plant receive 75% of their 11.8 million tons by rail;⁶⁶ (2) UP and BNSF are competitive via the Chicago gateway; and (3) approximately

⁶²(...continued)

proposes to serve, and the remainder was high BTU eastern coal.

⁶³ In Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company — Control and Merger — Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railway Company, No. 32760 (Sub No. 21)(Oversight) (Decision No. 10) (STB served Oct. 27, 1997), the Board stated at footnote 20 that "joint-line movements of unit-train coal are not inherently less efficient than single-line movements."

⁶⁴ MSC's single example of a mileage disadvantage to Energy Electric's Joppa plant is not sufficient evidence that DM&E would not, for the most part, compete on equal footing with incumbents.

⁶⁵ Utilities in this market may currently be served directly by rail or by rail/vessel combination. DM&E's forecast tonnage for this market is 73 million tons in 2010. See MSC's Brief, Exhibit 10, Table 14.

⁶⁶ As noted, MSC concedes that DM&E would face no mileage disadvantage in the Chicago gateway. If these plants receive delivery by rail, DM&E could then clearly participate

(continued...)

85% of the tonnage in this market requires conversion from Montana coal.⁶⁷ It credits DM&E for its mileage advantage to the Great Lakes at Milwaukee, but also maintains that Wisconsin Electric Power Company's (WEPCO) Presque Isle plant is located at Marquette, MI, which is 278 miles (by water) from Superior, and approximately 564 miles (by water, via Sault Ste. Marie) from Milwaukee.

DM&E claims that it would obtain a 62% share of the potential 73 million tons in this market. It bases its market share forecast on a mileage advantage to the docks at Milwaukee (1032 miles), versus BNSF's Montana haul from Decker and Spring Creek of 1045 miles.⁶⁸ DM&E claims that the dock at Milwaukee is ice-free 12 months a year, while Superior Midwest Energy Terminal (SMET), through which BNSF's Montana movements are routed, is ice-bound for 3 of the winter months. Milwaukee's year round operation will permit it to be more productive and lower utilities' inventory cost because they will no longer have to stockpile coal for the 3 months SMET is ice-bound. DM&E also claims that vessels returning to Milwaukee would be able to backhaul iron ore to Chicago (80 miles south of Milwaukee), resulting in vessel rates \$.80 per ton lower than those from SMET. It contends that shipping from Milwaukee would be less expensive than transloading at the KCBX terminal in Chicago because the switching and transloading charge of \$3.40 makes that move uncompetitive with either SMET or Milwaukee. Finally, it claims that Detroit Edison's Belle River/St. Clair and Consumers Power's Karn-Weadock plants are both served solely by vessel.

As discussed earlier, MSC has not offered any specific evidence refuting DM&E's contention that, for economic and environmental reasons, utility plants in this region would eventually run at a 75% capacity factor and burn an 85% blend of low BTU PRB coal. Nor has MSC provided evidence to support its claim that Montana coal's slightly higher BTU/lb

⁶⁶(...continued)

through Chicago as an equal competitor.

⁶⁷ It maintains that DM&E's analysis of Great Lakes volumes assumes that DM&E would be competing against Wyoming coal moving via Superior 74% of the time, and against Montana coal only 24% of the time, while the Board's Waybill Sample shows that Montana coal accounted for approximately 80% of the PRB coal moving via Superior in 1996.

⁶⁸ DM&E recognizes that BNSF's Montana coal is higher BTU (9,300-9,500 versus 8,400-8,800) than Wyoming coal. However, it asserts that utilities burn these coals interchangeably because Wyoming coal suffers no disadvantage with regard to delivered BTU cost. The price per million BTU for Montana coal is approximately the same as that of lower BTU Wyoming coal.

significantly impacts a utility's selection of coal.⁶⁹ Other than MSC's unchallenged contention that WEPCO's Presque Isle plant is 564 miles from Milwaukee and 278 from SMET, MSC has not shown DM&E's assumptions regarding vessel rates and transloading charges to be unreasonable.

Approximately 50% of the 28.4 million tons of coal U.S. utility plants in this market received in 1997 was from the Powder River Basin.⁷⁰ Of that 50%, about 8.3 million tons were higher BTU Montana coal.⁷¹ While DM&E admits that Montana coal is competitive with Wyoming coal where it has a mileage advantage, DM&E has a shorter water route to most of the Great Lakes market.⁷² MSC has not shown that, given the lower delivered cost per million BTU of Wyoming coal, these utilities' preference for Montana coal would likely continue.⁷³ Rather, it is reasonable to conclude that, as competition for electric production increases, utilities would reduce costs by purchasing coal with the lowest cost per million BTU that is compatible with their boilers or that they can retrofit their boilers to burn. Based on DM&E's mileage advantage to the Great Lakes, the lower delivered BTU cost of Wyoming coal, and the more vigorous nature of the Wyoming market versus the Montana market, we find adequate support in the record as it now exists for DM&E's claim that it could gain a 62% share of the coal delivered to this market.

⁶⁹ DM&E concedes that, where Montana coal has a mileage advantage over Wyoming coal, Montana coal is competitive in the market place. Three Montana mines are approximately 800 miles from SMET and would enjoy a mileage advantage of over 200 miles over DM&E coal to Milwaukee. However, production at those mines is currently about 20 million tons, and thus, they do not appear to threaten the vigorous nature of the Wyoming coal market in the utility industry.

⁷⁰ Abstracted from EIA 1997 Table 24. Ontario Hydro's data are not contained in EIA's data since it is Canadian owned. DM&E claims that this utility could potentially burn 31.6 million tons in 2010. MSC is silent on this issue, and we accept DM&E's claim.

⁷¹ Of this, 7.5 million tons move to Detroit Edison's Belle River /St. Clair plant. It is unclear how this coal was delivered--by vessel, as DM&E claims, or by rail, as MSC asserts.

⁷² The distance from Milwaukee to Detroit Trenton Channel Plant is approximately 250 water miles shorter than from SMET.

⁷³ Montana coal has a higher BTU/lb delivered cost than Wyoming coal. For example, see EIA's 1997 Table 24 for Detroit Edison's Belle River/St. Clair complex. The delivered cost per million BTU of Wyoming coal is approximately \$1.01, while Montana coal has a delivered cost of \$1.53.

Upper Midwest Rail Market.⁷⁴ MSC breaks the Upper Midwest Rail market into three segments: Minnesota, Wisconsin, and other, assigning DM&E market shares of 30%, 35%, and 16%, respectively. It calculates a total market share of 29.8%. It concedes mileage advantages to DM&E in the Minnesota and Wisconsin markets, but contends that they are overstated by DM&E. In the Minnesota segment, MSC states that IES Utilities Co.'s Columbia plant receives coal via a BNSF connection with the Canadian Pacific Railway System (CPRS) over a 1072-mile route. This, MSC asserts, translates into a potential DM&E mileage advantage of only 127 miles, rather than 375 miles, as DM&E claims. For Northern States Power's Minneapolis/St. Paul plants (Black Dog, High Bridge, King, and Riverside), MSC claims Montana coal would be competitive with a haul of 760 miles from the Rosebud/Big Sky/Absaloka portion of the Montana PRB to the Minneapolis/St. Paul area. MSC states that, in 1996, this entire market received significant (36% of a total of 36 million tons) Montana coal tonnage. It asserts that this coal would have a small mileage advantage over DM&E's Wyoming coal rather than a mileage disadvantage of 215-232 miles. MSC also claims that Northern States Power's plants would require build-outs in order to use DM&E's service, the longest of which would be 20 miles for the Shelburne plant, and that this may make DM&E uncompetitive in this market.

The Wisconsin segment contains IES Utilities Co., Madison Gas & Electric, Manitowoc Public Utilities, WEPCO and Wisconsin Public Service Corp. MSC claims that plants receiving 56% of current PRB tonnage in Wisconsin would require a build-out to permit them access to a second delivering carrier. MSC also claims that these utilities use high BTU western coal.⁷⁵ MSC claims that DM&E's purported 220-250 mile advantages to the Wisconsin Public Service Pulliam and Weston plants ignores BNSF's ability to interchange Montana coal with the Wisconsin Central Railroad (WC) or CPRS at Minneapolis/St. Paul.⁷⁶ According to MSC, Madison Gas & Electric's

⁷⁴ DM&E's forecast tonnage for this market is 44 million tons in 2010. See MSC's Brief, Exhibit 10, Table 14.

⁷⁵ This includes WEPCO's Oak Creek and Pleasant Prairie plants and Wisconsin Power and Light's Edgewater plant. Approximately 25% of Oak Creek's coal usage is high BTU New Mexico coal, while Edgewater's high BTU coal burn was only 72,000 tons in 1997. Pleasant Prairie used all low BTU Wyoming coal in 1996 and 1997. EIA Table 24.

⁷⁶ MSC cites as an example DM&E's planned route to serve the Pulliam plant, which involves interchange with WC at Minneapolis. MSC asserts that, because the BNSF route from Montana to Minneapolis is shorter than the DM&E/I&M Rail Link (IMRL) movement from Wyoming to Minneapolis, the overall mileage advantage to the Pulliam plant would rest with the BNSF route.

and Manitowoc Public Service's plants are not current users of PRB coal.⁷⁷ Finally, MSC claims that DM&E has a mileage disadvantage of over 200 miles to IES Utilities Co.'s Ottumwa plant, and that DM&E's proposed build-out there is "nonsensical."

On the other hand, DM&E argues it would have a very strong competitive advantage in the Upper Midwest Rail market due to its mileage advantage to 11 plants⁷⁸ and forecasts a 61% share of this market. DM&E states that its projections account for rate concessions that would be required to pay for build-outs by allowing an additional rate discount to recover the build-outs' cost and that each utility would gain additional benefit from lower, competitive rail rates. DM&E also argues that MSC evidently did not realize that the build-out at WEPCO's Pleasant Prairie plant is already complete or that IES's Edgewater plant can be served using barges from Milwaukee.

DM&E claims that it would benefit from the newly deregulated electric utility industry, because competitive pressure to be the low-cost producer of electricity would create a need for competitive rail service and lower delivered cost per million BTU. DM&E concedes that some utilities in this market use high-BTU western coal available only from UP and BNSF, but asserts that the majority of the market is for Wyoming coal. It also contends that the plants at which DM&E would have significant mileage advantages are likely to be running at increased capacity factors in the evolving deregulated electricity markets and that PRB coal will fill the gaps as capacity rises.

⁷⁷ As noted, MSC maintains that plants such as these which have not committed to PRB coal after 14 years of two-railroad competition must face economic barriers to conversion and are thus unlikely to convert now.

⁷⁸ The eleven plants are IES Utilities Co.'s Columbia plant, Madison Gas & Electric's Blount Street plant, the City of Manitowoc's Manitowoc plant, Northern States Power's Black Dog, High Bridge, King, and Riverside plants, WEPCO's Oak Creek and Pleasant Prairie plants, and Wisconsin Public Service's Pulliam and Weston plants. They are listed in DM&E's Reply, verified statement of Mann, Table 3. The table shows a rail mileage advantage of 100 miles or more to two plants (both of which would require build-outs), 200 miles or more to seven plants (two of which would require build-outs) and 300 miles or more to two plants (Alliant's Columbia plant and Madison Gas & Electric's Blount Street plant, which also would require build-outs). These eleven plants are expected to consume 22 out of a total market of 44 million tons of coal in 2010.

EIA's Table 24 data shows that utilities in this market received 36.5 million tons of coal in 1997. Of this total, 25.5 million tons were from Wyoming and 7.2 million were from Montana.⁷⁹ Montana coal is competitive where it has a mileage advantage, such as from the BNSF-served Absaloka, Big Sky, and Rosebud mines, which, as MSC points out, are just over 830 miles from Minneapolis.⁸⁰ However, this group of Montana mines produced one-half of the 40 million tons of coal mined in Montana in 1996. When compared to the 255 million tons produced in the Wyoming portion of the PRB, Montana's competitive reach is obviously limited and in this market where it has its greatest mileage advantage, it still only commands 20% of the total market.

In contrast, Wyoming's coal dominates this market with a 75% share, and DM&E's evidence shows that its proposed routes for Wyoming coal command a mileage advantage to the largest users.⁸¹ While build-outs could be required, it appears that some of those plants could benefit greatly from DM&E service. Even the Shelburne plant, with a 20-mile build-out,⁸² could find it profitable to use DM&E, because it would not only shorten its Wyoming haul but also permit more competition for the 4.6 million tons of coal coming from Montana.

DM&E's assertion that it would gain a 61% share of the tonnage of the Upper Midwest Rail market is based on its mileage advantage to plants accounting for a majority of the tonnages in that market. MSC concedes that DM&E possesses mileage advantages, but contends that in some instances they are overstated. But MSC does not dispute that mileage advantages of whatever magnitude translate into cost advantages and higher market share. Indeed, MSC relies on that very

⁷⁹ The largest single user of PRB coal in this market is Northern States' Shelburne plant, which received 8.6 million tons in 1997 and 8 million tons in 1996. Of this total, 4.6 and 4.2 million tons in 1997 and 1996, respectively, were Montana coal from the Rosebud, Absaloka and Big Sky mines. This plant also used 3.8 and 3.9 million tons of Wyoming coal in 1997 and 1996. See EIA 1997 Table 24.

⁸⁰ Based on ALK Associates PC Rail for Windows, Version 5.0 routing model for coal/bulk.

⁸¹ DM&E would possess a mileage advantage to plants which received 17.2 million tons in 1997. They are: Northern States Power Black Dog (837,000 tons); High Bridge (757,000 tons); King (1.2 million tons); Riverside (1.3 million tons); Shelburne (3.8 million tons but requires a 20 mile spur); WEPCO's Oak Creek (673,000 tons, but requires a 5-mile spur) and Pleasant Prairie (5.4 million tons, but requires a 1-mile build-out); and Wisconsin Public Service Corp's Pulliam (1.4 million tons) and Weston (1.9 million tons) plants.

⁸² Houston Lighting and Power Company, which burns approximately 10 million tons of coal annually, found a build-out of this approximate length to be economic.

principle to assign higher market shares to BNSF and UP in markets where those carriers have a mileage advantage.

MSC's argument that the need for several plants to build connections to receive coal via DM&E would defeat DM&E's mileage advantage is unpersuasive. DM&E argues that the utilities' incentive to obtain the benefits of increased competition would induce them to build out. We think that contention is reasonable. DM&E further explains that it could absorb the costs of the build-outs. This also appears reasonable, inasmuch as the cost advantage of lower mileage would be permanent whereas the cost of building out would be incurred only once. The cost of building out would have to be quite substantial in order to defeat a significant mileage advantage, and MSC has not made that showing as to any plant.

Finally, given the impact of CAAA 1990, we cannot subscribe to MSC's argument that high BTU western coal would account for a substantial part of the expected increase in coal usage in this market. Rather, we find more persuasive DM&E's argument, based on historical experience, that the additional impact of Montana coal in this market, likely would be limited. For all of these reasons, we think that DM&E's argument that it would become the dominant rail carrier of coal in the Upper Midwest market is supported on the present record.

Upper Mississippi River.⁸³ MSC claims that DM&E overlooks the possible role of BNSF's northern corridor line from Montana for several plants in the Upper Mississippi segment. It maintains that Wisconsin P&L's Nelson Dewey plant is a substantial consumer of Montana PRB coal and that Dairyland's Alma-Madgett plant could also use Montana coal. MSC argues that BNSF can reach East Winona from Montana using an 885 mile route (only 75 miles longer than DM&E's 810-mile route) and that BNSF can serve any plant in this market. MSC also asserts that BNSF's line along the Mississippi River in Wisconsin passes through Genoa (the location of a Dairyland plant) and Cassville (the location of the Nelson Dewey plant), giving BNSF the apparent ability to build in to these plants if faced with new competition from DM&E. MSC projects that DM&E would only capture a 33% share of this market.

DM&E contends that it would have a mileage advantage of almost 200 miles over BNSF and UP on Wyoming movements to the Mississippi River. DM&E adds that MSC merely generalizes about conversion and the use of Montana coal without showing that plants actually use it.

This is a small market (6.7 million tons in 1997). The evidence presented indicates that one-third of this market's tonnage in 1997 originated in the Wyoming PRB, and none came from

⁸³ DM&E's forecast tonnage for this market is 8 million tons in 2010. See MSC's Brief, Exhibit 10, Table 14.

Montana.⁸⁴ Because the plants in this market currently ship one-third of their coal from Wyoming and the DM&E route is at least 140 miles shorter than either BNSF's or UP's from Wyoming origins, it appears that DM&E could have the upper hand in this market. As plants shift to higher concentrations of Wyoming coal in their blends to comply with CAAA 1990's stricter emission standards, DM&E should be able to pick up additional tonnages. Therefore, DM&E's projected 42% share appears to be reasonable.

Other Market Opportunities.⁸⁵ This category is comprised of the Memphis Gateway and Lower Mississippi River markets and other market expansion opportunities, which appear to consist of geographically disbursed utilities. DM&E contends that there is a potential for it to carry 60 million tons of coal to these additional markets. It realizes that it would have to accept lower netbacks because of mileage disadvantages here, but nonetheless believes that it could still compete in these markets. MSC challenges DM&E's proposed share of these markets, contending that mileage disadvantages would make DM&E a weak competitor in them.⁸⁶ MSC also maintains that DM&E could offer the utilities in these expansion markets little in the way of incentives which BNSF or UP cannot also offer. It states that plants in DM&E's "other market" expansion opportunities used no PRB coal in 1996 and claims that this fact shows they are outside of the geographic area where PRB coal is a significant competitive option. It further asserts that carriers currently serving these plants would cooperate with the PRB incumbents only if they were made better off financially by promoting the use of PRB coal.

We agree with MSC. DM&E has not supported its contention that it could attain an equal share of these markets and we have excluded this tonnage from our financial projections. Because of distance disadvantages, DM&E likely would have a difficult time competing with UP and BNSF on an equal basis. Further, DM&E has not countered MSC's contention that utilities in its "market expansion opportunities" are outside the geographic limits where PRB coals are economically competitive with other local coals.

Summary. The parties agree that, as DM&E's traffic base expands, the railroad would become more profitable. Moreover, deregulation of electric producers and future competition in electric power markets could make DM&E's target markets prime areas for growth of electric production and, thus, for Wyoming coal. The incremental coal would be more likely to come from

⁸⁴ EIA's 1997 Table 24.

⁸⁵ DM&E's forecast tonnage for these combined markets is 79 million tons in 2010. See MSC's Brief, Exhibit 10, Table 14.

⁸⁶ MSC points out that DM&E's mileage disadvantage in the Memphis Gateway market and Lower Mississippi River would be 185 and 336 miles respectively. It also notes that the incumbents can offer single-line service compared to DM&E multi-carrier service.

the Wyoming PRB because of its lower delivered cost per million BTU and the presence of DM&E in those markets if DM&E were to gain access. Future tonnage originating from the PRB in 2010 will, as discussed previously, likely be somewhere between EIA's estimate of 406 million tons and Witness Mann's forecast of 530 to 550 million tons. DM&E would have a mileage advantage for Wyoming PRB coal over the incumbents in the Great Lakes, Upper Midwest Rail and Upper Mississippi River markets, and these markets currently ship approximately 34.8 million tons of Wyoming coal. DM&E forecasts that these markets have the potential to receive a total of 129 million tons (76.7 million in the Great Lakes market, 46.2 in the Upper Midwest Rail market and 6.7 in the Upper Mississippi River market) in 2007. In the Chicago Gateway (potential of 89.6 million tons in 2007) and Ohio River (potential of 55.2 million tons in 2007) markets, DM&E would also be a competitor. (Currently, 102 million tons of coal terminate in these two markets, 43.9 million tons of which is Wyoming coal). While MSC has shown that there certainly are some questions regarding exactly what DM&E's total and regional market shares likely would be,⁸⁷ there is little doubt based on the present record that DM&E would be a real market presence. While MSC expresses doubts about DM&E's ability to compete in these markets, it agrees that the DM&E would have mileage advantages in some markets and is equidistant with BNSF and UP from other markets. Its restatement of DM&E's projected market based on EIA's overall market forecast is less persuasive than DM&E's more specific utility-by-utility analysis. Therefore, we conclude that the record as developed to date supports DM&E's contention that, in 2002, DM&E's penetration into these markets could equal 40 million tons, increasing to 100 million tons in 2007.

REVENUES/RATES

DM&E has developed netback estimates (mills per ton-mile) based on the incumbents charging current rate levels or 8.25 mills per ton-mile. The latter represents the lowest rates DM&E believes incumbents (UP and BNSF) could feasibly offer in order to capture traffic for movements with full origin-to-destination transportation competition.⁸⁸ Assuming as a worst case

⁸⁷ We note that DM&E bases its optimistic financial projections on volumes of 40 million tons in 2002, increasing to 60 million tons in 2003 and by 10 million tons annually through 2007 when it would transport 100 million tons. However, the sum of the products of DM&E's projected market tonnages times market share does not result in a forecast of 100 million tons. Rather, it produces a tonnage projection of approximately 120 million tons. DM&E does not explain this discrepancy.

⁸⁸ DM&E estimates, based on its analysis of 1996 BNSF and UP variable costs derived from the Board's Uniform Rail Costing System, that the lowest possible rate level for these carriers was 8.25 mills per ton-mile in 1996. This assumes the incumbents must price above their incremental cost to make a profit. DM&E assumes that the lowest price the incumbents

(continued...)

scenario for DM&E that BNSF and UP would compete aggressively for all traffic by offering rates as low as is feasible (8.25 mills per ton-mile), DM&E then calculates the “netback” in mills per ton-mile it would receive if it and its transportation partners captured a specific plant’s traffic.⁸⁹ These DM&E’s transportation pricing assumptions can be found in MSC’s Reply, Volume 2B of 2, Exhibit 10, pages 16-24 of Fieldston’s report. As set forth in scenarios 3 and 5 in Table I above, this worst case (for DM&E) rate assumption would yield an average market rate for DM&E of 8.76 mills in 2002 and 8.99 mills in 2007.

⁸⁸(...continued)

will set for their service is 8.25 mills. DM&E increases this lowest rate level by 0.5 mills per ton-mile for the period 2002-2007.

⁸⁹ DM&E’s netback estimates are the mills per ton-mile it believes it can earn if it captures a utility’s traffic. Examples of specific plant netbacks are set forth in MSC’s Brief, Volume 2A of 2, Exhibit 6, Table 11, pages 37-39. DM&E’s netback is calculated by first multiplying the utility’s distance from its current or closest potential Wyoming PRB coal supplier times 8.25 mills per ton-mile. This yields the rail portion of the transportation cost. To the rail portion is added any other charges, such as current transloading fees for subsequent vessel or barge movements and the current water borne transportation charges. This calculation provides the total amount a utility would pay to transport coal based on BNSF or UP offering a rail rate of 8.25 mills. From this amount, DM&E then subtracts its estimate of vessel or barge rates, transloading fees, rebates for the utility’s cost of a build-out, etc. This calculation results in the lowest feasible amount that DM&E and its rail partners would receive if they captured the traffic. DM&E assumes that the division of this rate between participating carriers is made on a mileage prorate basis and simply divides this amount by the rail distance. Because DM&E and its rail partners would have a mileage advantage to a large number of electric generating plants, DM&E contends that it would receive a higher net-back (mills per ton-mile rate) for its service than BNSF/UP’s rate level of 8.25 mills per ton-mile.

The following example, drawn from DM&E’s Upper Midwest Rail market, should clarify DM&E’s calculations. Wisconsin Public Service Corp’s (WPSC) Pulliam generating station received 1.5 million tons of 8,800 BTU/lb coal from Wyoming’s Campbell County. According to DM&E, the shortest current rail route from Wyoming to the plant is an interline route combining UP (1,095 miles) and WC (225 miles) movements for a total of 1,320 miles. Based on UP/WC quoting a rate of 8.25 mills, WPSC would pay a rail rate of \$10.89 per ton (versus its current higher rate.) DM&E would serve Pulliam with interchanges to I&M Rail Link and WC for a total route of 1,100 miles. Dividing \$10.89 by 1,100 miles yields a netback to DM&E and its partners of 9.9 mills per ton-mile. (This calculation does not include DM&E’s assumption regarding rail car savings because of its shorter route and, thus, more rapid turnaround of equipment.)

MSC accepts DM&E's estimate of rates in the 8.25 mills per ton-mile range as the lowest feasible PRB coal rate in 1996 but argues that the direction of competitive PRB coal rates will be downward because of increased competition, declining costs caused by general efficiency improvements in the rail industry, and specific efficiency improvements in unit coal train technology. DM&E, on the other hand, sees productivity in unit coal train operations keeping pace with inflation of input prices, and the lowest likely rate levels for UP and BNSF remaining static at 8.25 mills per ton-mile until 2002.

MSC's argument that the lowest feasible PRB rates will decline from 8.25 in 1996 to 7.24 mills per ton-mile in 2007 is unpersuasive.⁹⁰ While PRB rates reached a low point in 1993, since that time, they have increased to the 8.25 level.⁹¹ MSC argues that general industry productivity, as reflected in our Rail Cost Adjustment Factor, adjusted for productivity, will lower unit coal train cost and be reflected in those rates. But there is no direct link between general industry productivity improvements and productivity for BNSF or UP unit coal trains. Certainly these carriers have made productivity improvements by using newer, more powerful locomotives, distributed power, larger and lighter rail cars, and longer trains. However, as MSC itself points out, these productivity enhancements have already been put in place. Thus, we see no basis on the current record to conclude that future productivity in unit train operations will cause UP's and BNSF's costs for those movements (but not DM&E's costs) to decline by 2% a year from 1996-1998 and 1% thereafter until 2010, as MSC asserts. Rather, DM&E's view that the lowest feasible rate incumbents might charge would be 8.25 mills per ton-mile in 2002, increasing by 0.5 mills through 2007, appears more representative of what carriers can expect. Accordingly, DM&E's

⁹⁰ The projected coal rates appear to be too low because recent improvements in overall railroad productivity may not continue unabated into the future, and there is no evidence in the record as to how projected productivity gains would be dispersed. In addition, the rates are inappropriately compared to DM&E's costs, as MSC adjusts DM&E's future rates for anticipated and significant productivity pass-through, but does not adjust its costs.

⁹¹ As noted, DM&E calculated the incumbents' lowest feasible PRB coal rate based on BNSF's and UP's 1996 URCS long run incremental cost. (DM&E's Mann Table 4 or Whitehurst Exhibit WWW-17). MSC states that DM&E's estimate of BNSF and UP long run incremental cost is incorrect and that the lowest feasible rate level should be lower. MSC (Whitehurst V.S. Oct. 28, 1998, at p.1) states that DM&E failed to adjust BNSF and UP cost to reflect efficiencies for unit coal trains attributable to locomotive, fuel, and crew costs. However, MSC did not provide any restated estimates of BNSF and UP costs. Thus, there is insufficient evidence in the record to provide a restatement.

netback assumptions based on its worst case (for DM&E) rate assumption appear to be reasonable.⁹²

INTEREST RATE ON PROJECT DEBT

The parties disagree on the cost of debt. DM&E contends it could raise debt capital at a rate of 8.25%. MSC asserts that the debt markets would require a higher return of 9.5% for this project.

MSC contends that DM&E's proposed 8.25% debt rate is too low because DM&E's debt history shows several previous loans at higher interest rates. These include: a short-term bank revolving loan with a rate of 9.25% in 1996 and 9.5% in 1997; a loan to finance corporate office expansion, issued in 1997 with a 9% rate; \$13 million in senior secured notes issued in 1996, maturing in 2006, with a 9.47% rate; and \$32 million in senior secured notes to refinance existing debt issued in 1994, maturing in 2007, with a 10.13% rate.

MSC compares the 1994 note to the (then) current cost of debt for Class I railroads in 1994, which was found by the ICC to be 7.9%, stating that DM&E's debt rate was 223 basis points⁹³ higher than the ICC's Class I rate. Adding 230 basis points to the 1997 cost of Class I railroads' debt determined by the Board (7.2%), it concludes that the DM&E would have to pay at least 9.50% in interest.⁹⁴ MSC also compares this 9.5% rate to the projected interest rate for the Tongue River construction project (12.2%), concluding that the 9.5% interest rate is very conservative.

DM&E argues that MSC's assumptions are wrong because this project would transform DM&E into a new, highly efficient railroad. DM&E argues that, therefore, lenders would base the interest rate on the future earnings potential of the railroad after the project is completed, not on the earnings potential and credit history of the existing DM&E. It further argues that the specific characteristics and timing of the Tongue River project resulted in the projected 12.2% interest rate and that comparison with Tongue River is irrelevant. Finally, DM&E contends that the 8.25% rate it has used for debt was developed in consultation with Morgan Stanley, based on the specific characteristics of this project and current debt market conditions.

The question of which interest rate the debt market would require is directly linked to the anticipated risk of the project. If the project is seen as high risk because of uncertainty over

⁹² We cannot validate DM&E's plant netbacks or average netback for a core market. DM&E did not submit the data that would have permitted us to do this.

⁹³ A basis point is one one-hundredth of a percentage point.

⁹⁴ MSC does not indicate how 223 basis points became 230 basis points.

whether DM&E can generate sufficient revenue to cover its debt service, investors will require higher rates. On the other hand, lenders may view it as being lower risk because DM&E would be a viable coal hauling railroad with distinct mileage advantages in certain markets.

It is difficult to predict how investors would view the DM&E. Equally hard to predict is what interest rates will be when this debt is actually floated in 2000 or 2001. Currently, interest rates are relatively low. However, we cannot accurately predict whether they will remain at their present levels, continue to fall, or rise over the next 2 years. Lenders, at the time of issuance, would weigh all the benefit and risk factors carefully before lending DM&E some \$1 billion.

Based on the available evidence, MSC's use of a 9.5% interest rate appears reasonable and the best evidence of record. MSC provides more support for its debt rate because it bases the rate on the point spread for an actual debt issuance by DM&E, relative to interest rates for Class I carriers. Furthermore, it more closely tracks DM&E's historic debt financing rates.⁹⁵ DM&E, on the other hand, only provides evidence based on undocumented discussions with Morgan Stanley and contentions that DM&E, after this project, would be more highly efficient than DM&E today, and that this difference would be perceived as less risky by investors and the financial markets.

CONSTRUCTION COSTS

DM&E anticipates that the proposed construction project would commence late in the year 1999, with major portions of the project occurring during 2000 and 2001. Actual coal traffic is projected to begin moving from the PRB in 2002. As noted, the cost of the entire proposed project would be approximately \$1.46 billion, consisting of \$532 million for construction of 280 miles of new road and \$875.6 million to rebuild 597.8 miles of existing road.

DM&E submits the following costs in support of its new construction program:

New main line earthwork, subgrade, rail, access to 11 mines, grade separations, yards, facilities bridges, misc. (262.03 miles)	\$335,790,000
Passing tracks	59,660,000

⁹⁵ How potential investors ultimately perceive the risk of investing in this project will determine the rate at which DM&E can borrow money. Obviously, if DM&E is able to secure debt at a rate lower than 9.5%, its financial position would be improved.

Signals and power switches	16,610,000
Engineering and contingency	76,340,000

Total, PRB extension	\$488,400,000
UP Bypass at Mankato	\$38,770,000
I&M Connection at Owatonna	\$4,850,000
	=====
Total New Construction	\$532,020,000

Compared with railroad construction costs presented by parties as pertinent to hypothetically efficient railroads under the stand-alone cost constraint in maximum rail rate proceedings, DM&E's total construction cost is higher on a per-mile basis.⁹⁶ In those proceedings, construction costs averaged \$1.55 million per mile, while the costs projected here are about \$1.90 million per mile. Because we have accepted the lower per mile costs as reasonable in other cases, and there has been no evidence presented here that this is not a valid comparison, DM&E's higher per mile construction costs appear reasonable. However, we point out there is insufficient detail on the record to compare costs below the aggregate level.

MSC argues that unstable soil under both the new construction and rehabilitation segments would be a significant cost obstacle. However, it presents no specific evidence supporting this claim. In addition, it does not present any alternative cost figures that would indicate the magnitude of the problem. DM&E recognizes that unstable soil conditions exist on both the new construction and rehabilitation portions of the line. Accordingly, DM&E took soil conditions into account in its estimated construction cost. In any event, concerns about erosion and other soil conditions will be fully addressed in the EIS.

DM&E states that approximately 598 miles of existing main track would be rehabilitated.

⁹⁶ See Bituminous Coal - Hiawatha, UT to Moapa, NV, 10 I.C.C.2d 259 (1994); Coal Trading Corporation, Et Al. v. B & O Railroad Co., Et Al., 6 I.C.C.2d 361 (1990); and Arizona Public Service Company and Pacificorp v. The Atchison, Topeka, and Santa Fe Railway Company, No. 41185 (STB served July 29, 1997).

DM&E submits the following costs in support of its rehabilitation program:

Rebuild Existing DM&E main line

Track rehabilitation/rebuild	\$273,430,000
Passing tracks	105,550,000
Yards, maintenance facilities	110,940,000
Bridge replace/rehabilitation	118,630,000
Signaling, power switches, misc	131,770,000
Other track work	20,650,000
Other procurement	21,000,000
Engineering and contingency	<u>93,780,000</u>
Total rebuild cost	\$875,750,000

While we have no historical figures regarding extensive rebuilding of existing track, the projected renovation cost is slightly lower than DM&E's average per-mile cost for new construction discussed above. This appears reasonable. We would expect to see a lower unit cost for rehabilitation compared to new construction because land acquisition and grading are not required.

FINANCIAL FITNESS: CONCLUSIONS

We have restated in Table II DM&E's income statements based on its tonnage forecast of 40 million tons in 2002 increasing to 100 million in 2010, DM&E netbacks⁹⁷ assuming incumbents charge rate levels as low as 8.25 mills per ton-mile in response to DM&E entry into the market, and MSC's debt rate of 9.5%. We note that neither the parties' financial statements nor our restatement includes any costs that might be required for mitigation of potential environmental effects. Our restatement is as follows:

⁹⁷ The netback millage rates used in Table II are based on the average of all of DM&E's netback rates.

TABLE II

	2000	2001	2002	2003	2004	2005	2006	2007
Income Statement								
Tons	NA	NA	40,000	60,000	70,000	80,000	90,000	100,000
Mills	NA	NA	0.00876	0.00878	0.00881	0.00884	0.00896	0.00899
Av Miles	NA	NA	810	810	810	810	810	810
Coal Rev.	0	0	283,824	426,708	499,527	572,832	653,184	728,190
Other Rev	60,793	63,282	78,203	79,737	81,300	82,891	84,512	86,164
Total Rev.	60,793	63,282	362,027	506,445	580,827	655,723	737,696	814,354
Op. Exp.	42,348	52,124	132,018	178,249	201,850	225,466	249,097	272,742
G&A Exp (Net)	3,798	4,443	30,146	36,141	39,053	41,947	43,686	45,972
Deprec & Amort	6,482	6,768	49,899	71,465	82,377	93,367	104,357	115,415
Inc Bef Int/Tax	8,165	(53)	149,964	220,590	257,547	294,943	340,556	380,225
Interest	6,140	6,084	97,730	93,157	88,181	82,755	76,905	70,653
Inc. Tax 38.2%	774	(2,344)	19,953	48,679	64,698	81,056	100,715	118,257
Net Income	1,251	(3,793)	32,281	78,754	104,668	131,132	162,936	191,316

It also should be noted that we need not rely on DM&E's tonnage forecasts to conclude that the proposed construction and operation appears to be financially feasible based on the evidence available. Taking MSC's projected volume of 17 million tons in 2002, increasing to 42 million tons in 2007--the volumes conceded by MSC to be "reasonably optimistic" and volumes amply supported by the record--and MSC's 9.5% interest rate, and applying the 8.25 millage rate used by MSC in its restatement,⁹⁸ the project would begin to produce a positive income in 2004 and, for the period 2002-2007, would produce a net income in excess of \$49 million. These results are set out in Table III:

⁹⁸ MSC adopted DM&E's 8.25 mills in its 17 million ton scenario.

TABLE III

	2000	2001	2002	2003	2004	2005	2006	2007	Total Profit
Income Statement									
Tons			17,000	25,000	29,000	34,000	38,000	42,000	
Mills	NA	NA	0.00825	0.00825	0.00825	0.00825	0.00825	0.00825	
Av Miles	NA	NA	810	810	810	810	810	810	
Coal Rev.	NA	NA	113,603	167,063	193,793	227,205	253,935	280,665	
Other Rev	60,793	63,282	74,204	76,994	78,503	80,038	81,603	83,196	
Total Rev.	60,793	63,282	187,807	244,057	272,296	307,243	335,538	363,861	
Op. Exp.	42,348	52,123	87,434	105,624	114,281	125,354	134,089	142,666	
G&A Exp (Net)	3,798	4,443	28,909	30,030	30,794	31,632	32,393	33,855	
Deprec & Amort	6,482	6,768	23,071	30,759	34,732	39,712	43,762	47,881	
Inc Bef Int/Tax	8,166	(52)	48,393	77,643	92,488	110,546	125,294	139,460	
Interest	6,028	5,510	97,728	93,148	88,172	82,747	76,897	70,978	
Inc. Tax 38.2%	817	(2,125)	(18,846)	(5,923)	1,649	10,619	18,487	26,160	
Net Income	1,321	(3,438)	(30,489)	(9,582)	2,668	17,180	29,909	42,322	49,891

Inasmuch as DM&E should be able to produce a positive annual income on these relatively modest volumes within 3 years of the commencement of operations, and total net income of almost \$50 million through 2007 excluding environmental mitigation costs, we conclude that the applicant has met its burden of showing that the proposed construction would pose no threat to the ability of DM&E to carry out its common carrier obligation to serve its present customers.⁹⁹

As noted, DM&E contends that it has a variety of financing sources available, and has submitted evidence and testimony from several sources concerning funding. These sources include Morgan Stanley (an investment firm), Schroder & Co. (an investment advisory company), and Lombard Investments (an institutional investment manager). Morgan Stanley submitted a letter dated February 17, 1998, which indicates its belief that the project would appear to be attractive to investors. Schroder provided a study dated August 27, 1998, which, while not making any commitments concerning financing, implies that the project appears promising and casts a favorable light on future earnings of the railroad after completion of the project. Lombard states that it believes that the project is attractive from a financial perspective, that DM&E has assembled an experienced team of financial advisors, that considerable interest exists in the financial

⁹⁹ We note that these volumes would not produce a positive cash flow under DM&E's proposed amortization schedule of 13 years. But DM&E has no obligation to pay off its debt in that period of time, nor is it precluded from refinancing its debt at any time. Therefore, we have focused on net income as the better indicator of financial viability.

community for equity financing prior to the time when construction would begin, and that the financial marketplace, not the Board, would ultimately determine whether this project is attractive enough to investors to obtain needed capital. Lombard also suggests that it might provide some of the financing for the project.

While these statements are all positive, no commitment of funds has been made to date. DM&E indicates that a decision from the Board regarding the transportation aspects of this project will help it go forward and obtain necessary financing. This has been true in prior cases, and the lack of committed financing at this stage is not, in our opinion, grounds to reject the application. As Lombard indicates, the ultimate determination of the financial viability of the project will be made by the financial markets. We see no reason, at this early stage of the project, to deny DM&E the opportunity to take its proposal to the financial markets.

TRANSPORTATION BENEFITS

DM&E contends that the project would generate quantifiable public benefits totaling \$236 million per year. These benefits would include \$202 million in transportation cost savings for railroad operations and lake vessels resulting from improved productivity and efficiency, \$24 million in savings resulting from improved railcar cycle times, and \$10 million in railcar pooling savings. Other transportation benefits listed by DM&E include: (1) competitive transportation options at seven utility plants for the first time; (2) smaller coal inventories and smaller railcar fleets due to faster cycle times; (3) 50 to 100 million tons of increased coal hauling capacity from the PRB; (4) more efficient operations of PRB mines; and (5) better service for DM&E's existing customers.

In response, MSC argues that virtually all of these benefits would not be realized because of its anticipated minimal usage of DM&E by utilities in these markets. The Coalition estimates railroad and lake vessel savings would be \$9.72 million and considers other savings negligible. MSC claims that the proposed benefits due to improved cycle times and railcar pooling are not realistic, nor are DM&E contentions of more competition and more reliable service. Finally, MSC states that the benefits that would be derived from additional capacity are speculative, because both BNSF and UP are adding additional capacity to their PRB lines to meet increasing market demand.

We agree with DM&E that, based on the current record, there likely would be transportation benefits from transportation cost reductions where there are mileage savings. Improved service from this new line construction project should also yield transportation benefits.

PUBLIC INTEREST, DEMAND OR NEED

We also conclude that, based on the information available to date, there is public demand for this project. The Coal Consumers, who collectively purchase and transport by rail well over

100 million tons of coal annually, most of which is from PRB mines, as well as almost all current shippers, have expressed their support. The DM&E project would establish another PRB transportation competitor, which should have a positive impact on rates and service for the increasing volumes of PRB coal. There is presently competition for PRB coal provided by BNSF and UP. But DM&E is offering new PRB coal transportation service that should generate efficiencies and provide important benefits to PRB coal shippers.

It is also clear that the current record provides evidence that the public interest would be well served by this construction. DM&E has documented various anticipated public benefits. Western coal shippers that would be able to receive DM&E service directly by joint line rail service or by joint DM&E and barge service should receive direct benefits from DM&E's proposed service. An additional competitor in this marketplace would respond to the growing demands for the service in question. DM&E should bring a lower cost structure (including shorter mileage), faster and more reliable service, and additional capacity.

At the same time, existing DM&E shippers' rail service should be preserved and improved. We base this conclusion on DM&E's evidentiary presentation and the fact that some 90% of DM&E's current shippers have indicated their support for this project while none has voiced any objections. DM&E's existing shippers and receivers also indicate that they believe that the only real risk associated with this project is the possibility that the Board might not approve it, which could result in the failure of the railroad to continue to operate. Finally, DM&E's shippers and receivers indicate that they see no risk that their services would be adversely affected from increased competition in the PRB. In fact, they contend that this additional source of PRB coal would benefit their entire region.

DM&E also claims that this construction project would improve service for existing customers. It explains that complete rehabilitation of the existing line from Wasta, SD, to Winona, MN, is necessary to sustain future railroad operations. DM&E asserts that rehabilitation of its lines could not be justified based on DM&E's existing customer base. The railroad indicates that two-thirds of its ties need replacement, ballast is in generally poor condition, and most of its rail needs replacement. In sum, DM&E argues that its assets are worn out and need to be replaced, and that this will occur, to the benefit of existing shippers, if and when this project is approved and constructed.

We agree that DM&E's infrastructure hampers its ability to serve its existing customers. A railroad with annual revenues in the \$50 to \$60 million range cannot generate sufficient funds to rehabilitate its lines, because normal maintenance expense for over 1,000 miles of track, much of it mainline, runs into millions of dollars per year. Replacing track, ties and ballast that are deteriorating costs millions more. Thus, there appears to be the very real likelihood that, absent the funds generated by this project, DM&E would cease to exist as a viable railroad.

In sum, given the financial analysis set out above, the substantial support by its existing shippers, and the possibility of DM&E's being unable to continue to operate for long without a large infusion of capital sufficient to rehabilitate its system, we believe, based on the record now before us, that the public convenience and necessity test of causing no harm to existing shippers and receivers has been met.

OPERATING AND CONSTRUCTION PLAN

DM&E's operating plan (Plan) and its operating and construction costs are based on the assumption that DM&E will move 40 million tons of coal starting in 2002, increasing to 60 million tons in 2003, and by 10 million tons per year thereafter until it carries 100 million tons in 2007.¹⁰⁰ The general approach in the Plan is similar to the design format presented by parties proposing the use, as benchmarks, of hypothetical and efficient railroads in railroad stand-alone cost maximum rate proceedings.¹⁰¹ The line proposed for construction here would be built so as to accommodate the movement of a single heavy-loading commodity carried in large volumes and in dedicated trains.

Although MSC disagrees with DM&E's traffic projections, it does not relate its modified traffic projections to a revised construction cost. MSC also claims that DM&E's Plan does not provide the Board with adequate assurance that the Plan can work safely and efficiently, as DM&E claims.¹⁰² MSC voices concerns relative to emergency braking distances for the high speed coal trains mentioned in DM&E's Plan. However, MSC has not shown that DM&E's locomotives

¹⁰⁰ DM&E's operating plan and investment will be more than sufficient for the transportation of lower tonnage levels in the earlier years of operation.

¹⁰¹ See West Texas Utilities Company v. Burlington Northern Railroad Company, No. 41191 (STB served May 3, 1996).

¹⁰² MSC requests that the Board direct DM&E to develop a detailed Safety Integration Plan (SIP), similar to that required in the recent CSX/NS/CR merger (STB Finance Docket No. 33388, Decision No. 52 served Nov. 3, 1997) before considering the transportation aspects of the application. However, we have never required a SIP in rail construction cases, which do not involve the integration of two corporate cultures on one rail line. Moreover, safety, to the extent appropriate, will be dealt with in the environmental review process. In these circumstances, there is no reason for us to delay issuance of this decision as MSC requests.

would not be able to perform emergency stops within sufficient distances to avoid accidents.¹⁰³ Contrary to what the Coalition maintains,¹⁰⁴ we are confident that the line would be configured with braking taken into consideration. We also have no reason to believe that DM&E would not comply with, or be able to meet, all applicable Federal Railroad Administration (FRA) safety standards and that the braking aspects of its proposed state-of-the-art train control system would not receive FRA approval.¹⁰⁵ In any event, the safety aspects of this application will be fully assessed in the environmental analysis.

Main Line Construction. DM&E's Plan states that main line track and structures are designed for 315,000-lb. cars operating in 135-car consists with three 6,000 horsepower locomotives distributed in each through train.¹⁰⁶ Maximum operating speed would be 45 mph for loaded coal trains and 49 mph for other trains. DM&E's main line track structure in the new and rehabilitation areas would consist of 136-pound continuous welded rail (CWR) on wood ties at 19.5-inch spacing. Ballast would be a minimum of 12 inches under the ties on 12 inches of subballast. Curves greater than 2 degrees would use concrete ties spaced at 24 inches with additional ballast. Sixty percent of the wooden ties would be replaced on the rehabilitated portion of the line. Maximum grade for the line would be 1.4% on tangent track and curves below 2 degrees. The grade would be restricted to 1.0% on curves greater than 2 degrees. Maximum curvature for the main line would be generally less than 2 degrees. Curves up to 4 degrees would occur on less than 10% of the alignment. Right-of-way width would be 200 ft., except where additional land is required for yards, large cuts or fills, and passing sidings. Subgrade width would be 26 feet in single-line areas. At locations where there would be adjacent track, track centers would be separated by 15 feet.

DM&E further explains that all timber bridges and steel bridges other than through plate girder bridges would be replaced. Through plate girder bridges would be repaired and reinforced. Passing sidings and communication-based train control (CBTC) would be provided with features similar to those in the new construction. Existing grade crossings would be improved as needed. A grade reduction project is included at Wall, SD.

¹⁰³ All relevant safety concerns, including accident rates, will be addressed in the EIS.

¹⁰⁴ See the Coalition's supplemental submission filed on October 28, 1998, at 20.

¹⁰⁵ On pages 12-14 of his Reply V.S., DM&E Witness Davis explains how the computerized operating model takes braking requirements into consideration using conservative assumptions.

¹⁰⁶ Initial operations will employ 286,000-lb. cars operating in 115-135 car consists.

Passing Sidings. DM&E's Plan includes 35-40 passing sidings, with each at least three miles long, located at frequent intervals along the line designed to allow entry at main line speeds of 45 mph and running at reduced speed through the sidings. It proposes to locate sidings to accommodate topographical conditions. Sidings would be constructed using new 115-lb. CWR. Tie and ballast specifications are the same as main track. Sub-ballast would be 9 inches deep. DM&E notes that empty trains would be operating over side tracks, not loaded trains. In the vicinity of passing sidings there would be dragging equipment and hot box detectors, as well as set out tracks for bad order equipment.

MSC questions the placement of sidings and criticizes DM&E for changing locations of sidings from optimum locations in order to accommodate topographical conditions. MSC claims that, by failing to locate sidings at the optimum locations, DM&E would impair its claimed efficiencies. DM&E notes, however, that the computer model used for determining passing siding location shows that sidings can be varied. For example, moving the location of a siding to the east could allow an empty westbound train to enter a siding earlier. This may slow the empty westbound trains to a speed that is less than optimal, but would not impair the movement of eastbound loaded trains. Moreover, MSC does not quantify the extent to which it believes DM&E's efficiencies would be reduced by the relocation of a siding.

We do not view DM&E's placement of sidings as an obstacle to the issuance of this decision. The final location of sidings is bound to change somewhat as the details of property acquisition and engineering considerations and potential environmental impacts, such as the location of wetlands, becomes fully known. DM&E witness Davis persuasively shows that the computer modeling DM&E used allows for flexibility in the location of sidings. Accordingly, the project is not infeasible simply because DM&E may make adjustments in the location of certain sidings. The current record indicates that DM&E's signal and control systems would ensure that trains meet each other only where there is a siding. In the absence of any evidence of serious problems concerning the location of sidings, we will not create an artificial barrier to entry by requiring applicants to risk the expenditure of large sums to design a project of broad scope such as this down to its final details as to siding locations before we determine whether it satisfies the transportation aspects of section 10901.¹⁰⁷

Four Major Staging Yards. DM&E's Plan recognizes that, due to the interfaces with mines and connecting carriers, DM&E would not have complete control over the release of loaded trains and the receipt in interchange of empties. As such, the Plan provides for four staging yards to receive, hold and release through trains as necessary, to slot them efficiently onto DM&E's main line operations and to provide the proper maintenance windows. DM&E states that the West

¹⁰⁷ Also, the potential environmental impacts of sidings and anticipated rail operations will be addressed in the EIS.

Staging Yard would have train and engine crews to take empty trains to the mines and loaded trains from the mines, and stage the loaded trains for slotting the eastbound movement. The other three staging yards would be located across the system at intervals of approximately 225-275 miles, so as to provide for about 8 hours that each train crew would actually be on duty. These staging yards would have the capacity to hold trains as necessary to coordinate DM&E's operations with those of connecting carriers, as well as to create the necessary maintenance windows. Contrary to what the Coalition maintains, the Plan, based on the information available to date, leaves adequate room for the unexpected and does not depend on "clockwork-like movements" or train meets "scheduled to occur at 15-minute intervals."¹⁰⁸

Grade Crossings. DM&E states that, where feasible, major highway crossings and all rail crossings would be separated. DM&E asserts that it plans to build grade separations at almost all locations where new or rebuilt lines cross those of another railroad. DM&E's specifies grade separations at BNSF's line near Burdock, and in the PRB at Antelope, Cordero, and Bell Ayr. (DM&E does not specify what type of construction will be used at the BNSF/UP crossing near Caballo Rojo or the crossing of BNSF line at Burdock.)¹⁰⁹

DM&E adds that grade crossings would be provided with protection devices. Moreover, appropriate fencing would be provided in cattle country and cattle guards would be provided at road crossings. This information will be used in assessing grade crossings and fencing in the EIS.

Train Control. DM&E explains that its Plan assumes the use of a "Communication Based Train Control" (CBTC) system to manage its train operations. However, DM&E notes that it would also be able to operate efficiently with a standard Centralized Traffic Control (CTC) system and bases its operating and investment cost projections on this type of signal system. MSC claims that the CBTC system DM&E proposes to use is questionable from a safety standpoint because the system is still in the developmental stage and has not yet been approved by FRA. However, because DM&E has not based its operations and investment cost on the CBTC system, MSC's concerns are misplaced. In any event, we note that CBTC systems may be less speculative than alleged by the Coalition.¹¹⁰

¹⁰⁸ Reply V.S. of Levy, at 9-10; reply V.S. of Davis, at 20-21.

¹⁰⁹ We note that DM&E has not yet addressed how it intends to compensate BNSF, UP, and other railroads for crossing their lines in compliance with 49 U.S.C. 10901(d).

¹¹⁰ A report prepared by DM&E's engineering contractor Parsons Brinckerhoff states that CBTC systems are being tested by two Class I railroads in the Pacific Northwest and estimates that they may be available commercially and approved by FRA in time to be deployed in this project. See Vol. 2B of the Coalition's reply evidence, Exh. 13, at 22.

(continued...)

DM&E's Plan farther assumes four crew change points across the system, providing a cushion for thorough train crews to make their runs in under 8 hours, so that there should be no violation of the Hours of Service Act rules. DM&E states that crew changes would occur at the staging yards. Locomotive and car repair and inspections facilities would be constructed at one of the staging yards if that service is provided by DM&E. Locomotive running repairs, servicing and locomotive and car switching would occur at these yards as needed. By handling these requirements at the same location, DM&E expects to minimize train delay and maximize utilization of its crews and equipment. The Plan also assumes maintenance windows of up to 6 hours every day on the main line.

DM&E states that it plans for trains to move across the system in set time slots rather than being dispatched at odd intervals. According to DM&E, such regular movement not only would simplify operations and promote safety, but would also greatly enhance the capacity of the single track. DM&E states that virtually all of the eastbound traffic would be loaded trains that would stop only for crew changes at the staging yards. The use of regularly scheduled slots would also mean that the predominantly empty westbound trains also should not be required to stop between staging yards, as the meeting tracks (in excess of three miles long) would be designed so westbound trains can pass the eastbound trains without losing appreciable speed. As proposed, the scheduled slot system should not only keep trains moving evenly across the main track, but would spread the traffic among the staging and marshaling yards across the system, so that the line would have ample capacity at those facilities.

Train headway is the amount of time between trains heading in the same direction. In order to move 40 million tons of PRB coal, plus anticipated growth of existing business, in the first year DM&E would need the ability to move eight loaded trains a day for 363 days. The headway between each of the loaded trains (as well as the returning empty trains) would be one hour, but the headway would be reduced in subsequent years as traffic levels increase.

Capacity and Growth. DM&E anticipates that the total amount of traffic available would increase over time, and therefore its Plan takes into account likely traffic growth. This is particularly relevant in the case of meeting tracks. DM&E's proposed system is designed with the necessary expansion capacity built in, so that meeting tracks could be added without the need for

¹¹⁰(...continued)

In its supplemental submission filed on October 28, 1998, the Coalition asserts that DM&E witness Daniels "acknowledged that there was a risk" that its construction schedule would be delayed while the new technology receives FRA approval. Our role, however, is not to guarantee that the project is not delayed to allow the use of new technology but is simply to protect the public interest by ensuring that DM&E's existing shippers would not be adversely affected if the project is constructed with the new technology as proposed by DM&E.

any track or structures to be relocated. According to DM&E, the final design for this single-track railroad would provide for the reliable and safe movement of 100 million tons of PRB coal as well as the anticipated growth of existing traffic. Initially, only half of the meeting tracks would be constructed; when the capacity of the originally constructed line becomes constrained, the remainder of the designed-in meeting tracks would be built.

The Coalition has not shown that the proposed line would be unable to accommodate all of the projected traffic. The Coalition maintains that DM&E's proposed single track railroad would be inadequate. However, BNSF and UP transport more than 100 million tons of coal over equal or greater distances of bottleneck segments of single line track that, according to the evidence presented, is less efficiently designed than the single line track proposed to be built by DM&E.¹¹¹ In recent years, other railroads also have replaced double track with single track or built single line railroads that move comparable numbers of trains with a wider mix of commodities.¹¹²

Eastern Connections. DM&E's Plan depends on its ability to interchange cars with other railroads. The application identifies three primary interchange points with other railroads: (1) UP at Mankato, MN; (2) I&M Rail Link at Owatonna, MN; and (3) UP, CP, and I&M at Winona/Minnesota City, MN. In addition, DM&E asserts that it is negotiating a fourth interchange agreement, the essential details of which appear in the confidential version of DM&E's pleadings. There currently are no signed agreements with the connecting carriers at these interchange points.

We disagree with the Coalition's argument that the absence of signed interchange agreements is a reason for disapproval of the transportation related aspects of this project. By adopting the Coalition's approach, we would be imposing a duty on applicants like DM&E to reach agreements with connecting carriers before projects are even approved. This would unduly delay applicants like DM&E and place them at a bargaining disadvantage because connecting carriers are under no duty to negotiate with potential connections before they are built or at least finally approved.¹¹³ Moreover, the Coalition's approach would expose both carriers to the risk that the economic value of their connection would change in the interim between adoption of an interchange agreement and completion of a project. In any event, there is no reason to believe that DM&E's sources of capital would allow DM&E to assume investment risks until the terms of interchange are finalized.

¹¹¹ Reply V.S. of Davis, at 19-29.

¹¹² Reply V.S. of Levy, at 10-11.

¹¹³ Once a project is finally approved, the jurisdiction of the Board is available to ensure the interchange of cars with connecting carriers where reasonable agreements cannot be reached.

The Coalition alleges that the route proposed by DM&E includes a “nonexistent interchange with Illinois Central Railroad” (IC).¹¹⁴ However, the Official Railroad Station List, a widely used industry guide,¹¹⁵ shows an interchange between DM&E and the Cedar River Railroad Company, a wholly owned subsidiary of IC, at Glenville, MN.

Based on the current record, DM&E’s Plan appears to be feasible.

CONCLUSION

Based on the present record, it appears that DM&E would be competitive in a number of markets and accordingly, that the proposal has not been shown to be infeasible. Giving DM&E every reasonable benefit of the doubt, as the statute requires, we therefore find that, on the record developed to date, the construction and operation of the line of railroad described above satisfies the transportation aspects of 49 U.S.C. 10901. Following the conclusion of the environmental review process, which is ongoing, we will issue a further decision assessing the potential environmental impacts of the proposal and the cost of any environmental mitigation we might impose. This decision does not in any way prejudge our ultimate decision. Nor can any construction begin until our final decision has been issued and has become effective.

It is ordered:

This decision is effective on December 10, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

¹¹⁴ Supplemental V.S. of Witness Nelson, filed on October 28, 1998, p. 3, n.2.

¹¹⁵ This is a public tariff filed with the Board (Tariff OPSL 6000-S).

APPENDIX I

COMMENTERS¹¹⁶

COMMENTS IN SUPPORT

City of Philip, South Dakota
City Council and Mayor of the City of Doge Center, Minnesota
City of Midland, South Dakota, Midland City Council
Edison Electric Institute
FirstEnergy
Indianapolis Power & Light Company
Kansas City Power & Light Company
Kentucky Utilities Company
Mankato City Council
Newcastle Chamber of Commerce
Ontario Hydro
Philip Chamber of Commerce
Sleepy Eye City Council
Soo Line Railroad Company d/b/a Canadian Pacific Railway
The Campbell County Chamber of Commerce
The Associated General Contractors of South Dakota, Inc.
United Transportation Union, General Committee of Adjustment,
G0270, Monty T. Tuchel
Waseca Area Chamber of Commerce
Western Coal Traffic League
Wisconsin Public Service Corporation
Wisconsin Central Ltd.

¹¹⁶ Of the 147 parties of record listed in our June 5, 1998 decision, 49 filed comments in accordance with our May 5, 1998 decision.

COMMENTS IN OPPOSITION

777 Ranch

Arden B. and Lavonne Sigl

Black Hills Group, Sierra Club

Blue Earth County

Bridle Bit Ranch

Cindy S. Thesing

Donley and Nancy Darnell

Dwight L. Adams, Member State of South Dakota Railroad Oversight Committee

Fred R. Seymour, City of Brookings (SD) Railroad ad hoc Committee

Legislative Representative Brotherhood of Locomotive Engineers,

Division 94, Lawrence Kemper

Leslie Hammack

Mike Stufflebean, Legislative Representative, Union Transportation Union, Local #465

Mid-States Coalition for Progress

Nancy Hilding

Niobrara County Commissioners

Prairie Hills Audubon Society

Robert G. Dye

South Dakota Chapter Sierra Club

State of South Dakota Attorney General, Mark Barnett

Thomas R. Wright

Weston County Farm Bureau

OTHER COMMENTS

Mayo Clinic

The Mayo Clinic, located in the City of Rochester, MN, states that it shares the concerns of the greater Rochester community about the adverse effects of the DM&E proposal to rebuild its existing rail line through the heart of Rochester. The Clinic raises concerns regarding delays in the response time for emergency ambulance services, coal dust and the effect it would have on its patients, increased vibrations, crossing safety, and train derailments. The Clinic wants the environmental impact statement to encompass the improvements to the existing railroad as well as the new railroad construction, and it seeks imposition of a condition that would require DM&E to finance mitigating steps to address the health and safety concerns identified above.

Minnesota Department of Transportation

The Department seeks the imposition of several new construction conditions as well as Powder River Basin general construction conditions. It requests that the STB impose several operational conditions on the project to ensure safety, rail service, and interchange with other railroads. Another concern raised by MN/DOT is that DM&E share the financial information necessary to independently analyze the financial structure of the Powder River Basin project as a safeguard to the rail system in Minnesota prior to giving the Powder River Basin project approval. As part of the debt restructuring identified in the Powder River Basin Operating Plan, all outstanding loans from MN/DOT to the DM&E will be repaid. MN/DOT is concerned with DM&E's ability to service new debt. Additionally, MN/DOT submitted a letter from Minnesota's Governor, Arne H. Carlson, who reiterated that any support for the construction project is conditioned on the resolution of concerns of local communities that might be affected by DM&E's project.

Olmsted County

The County argues that applicant does not have sufficiently detailed plans in place that permit the parties of record to adequately comment and argue the merits of the application. It further argues that it is very difficult to separate the transportation matters from the environmental portion of the proceeding. Olmsted wants the Board to modify its order providing for the modified procedure to direct that DM&E provide the specific information necessary to respond to the concerns that have been submitted by the various interested parties, that the period for such submissions be extended as required and that then there be a reasonable period for the interested parties to respond. Additionally, Olmsted contends that the Board should provide that the upgrade portion of the project is subject to the transportation portion of the application and that the submissions of DM&E must include specific detailed information concerning the upgrades and the

modifications to the existing public facilities that will need to be modified to respond to this project and a demonstration of sufficient funding resources to support such changes in the infrastructure.

South Dakota Department of Transportation

The Department states that it has an interest in the financial ability of DM&E to construct and operate the project. It seeks clarification concerning the scope of the approval required by the STB on DM&E's upgrading of existing trackage. The Department claims that all aspects of the project, in addition to the new construction, are also subject to environmental review and STB approval. The Department requests that an independent review by the STB of the financial statements and projections occurs to ensure that any decision by the STB is based on sound, verified information.

The Governor of the State of South Dakota and the Governor's
Dakota, Minnesota and Eastern Railroad Oversight Committee

The Committee seeks an interpretation as to the extent of authority the STB has regarding the new construction in Wyoming, South Dakota and the bypasses in Minnesota while the Board's Environmental Analysis Section is considering impacts throughout the entire route over which trains will travel from the Powder River region in Wyoming to the Mississippi River. It maintains that a clarification by the Board is needed.

U.S. Department of Justice, Federal Bureau Prisons, Federal Medical Center

The Center raises concerns about the close proximity of planned railroad track to the prison facility. It seeks a rerouting of tracks outside the City of Rochester.

Winona County Highway Department

The Department recognizes benefits of the proposed construction project but raises concerns about increased rail traffic over a line already under study as a high speed passenger rail line through the Midwest Rail Initiative Study. Winona County wants participation by all rail service providers and all levels of government.

APPENDIX II

HISTORICAL FINANCIAL POSITION

DM&E has submitted historical financial statements for the years 1995 and 1996 in its application. These data are summarized in the table shown on the following page.

These data indicate that the DM&E has realized rates of return that were substantially higher than those realized by the Class I railroads as a whole for the year 1995 and approximately equal to the Class I composite for 1996.¹¹⁷ The operating ratios for those years were similar to those for the Class I's.¹¹⁸ Due to new debt financing during 1996, interest expense was higher. Also, certain operating expenses were somewhat higher in 1996 as well.

¹¹⁷ The Class I railroad composite return on equity was 12.2% and 7.9% for 1996 and 1995, respectively. The return on investment was 9.0% and 6.5% for those respective years.

¹¹⁸ The Class I composite operating ratios were 80.5% and 86.4% for 1996 and 1995, respectively.

Historical Financial Data for DM&E - 1996 and 1995

		1996	1995
	<i>Balance Sheet</i>		
1	Net Property, Plant & Equipment	\$106,283,187	\$73,242,973
2	Other Assets	<u>22,373,544</u>	<u>23,490,519</u>
3	Total Assets	128,656,731	96,733,492
4	Long-Term Debt	73,197,622	42,710,717
5	Deferred Income Tax	14,572,017	12,819,662
6	Other Liabilities	16,923,748	20,150,963
7	Shareholders' Equity	<u>23,963,344</u>	<u>21,052,150</u>
8	Total Liabilities & Equity	128,656,731	96,733,492
	<i>Income Statement</i>		
9	Revenues	56,562,557	45,726,418
10	Operating Expenses	47,445,698	37,127,224
11	Operating Income	9,116,859	8,599,194
12	Other Income	1,214,643	619,023
13	Interest	5,760,438	3,794,587
14	Income Taxes	1,746,120	2,033,861
15	Net Income	2,824,944	3,389,769
16	Operating Ratio (L10/L9)	83.88%	81.19%
17	Return on Equity (L15/L7)	11.79%	16.10%
18	Return on Investment ((L11-L14)/(L1-L5))	8.04%	10.87%

**Notice of Availability of Final Scope of Study for the Environmental
Impact Statement (EIS); Request for Comments on 1) the Modified
Proposed Action, referred to as Alternative C, and 2) the City of
Rochester, Minnesota's South Bypass Proposal**

Decision No. 30090

March 10, 1999

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30090
SEA

SERVICE DATE - MARCH 10, 1999

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33407

Dakota, Minnesota & Eastern Railroad Corporation
Construction Into the Powder River Basin¹

Decided: March 5, 1999

Agencies: **Lead:** Surface Transportation Board.
 Cooperating: U.S.D.A. Forest Service.
 U.S.D.I. Bureau of Land Management.
 U.S. Army Corps of Engineers.

Action: Notice of Availability of Final Scope of Study for the Environmental Impact Statement (EIS); Request for Comments on 1) the Modified Proposed Action, referred to as Alternative C, and 2) the City of Rochester, Minnesota's South Bypass Proposal.

Summary: On February 20, 1998, the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) filed an application with the Surface Transportation Board (Board) for authority to construct and operate new rail line facilities in east-central Wyoming, southwest South Dakota, and south-central Minnesota. The project involves construction of new rail line totaling 280.9 miles. Additionally, DM&E proposes to rebuild 597.8 miles of existing rail line along its current system to standards acceptable for operation of unit coal trains. Because the construction and operation of this project has the potential to result in significant environmental impact, the Board's Section of Environmental Analysis (SEA) determined that the preparation of an Environmental Impact Statement (EIS) is appropriate. SEA held 3 agency and 12 public scoping workshops in 14 cities as part of the EIS scoping process, as discussed in the Notice of Intent to Prepare an EIS, Request for Comments on the Proposed EIS Scope, and Notice of Scoping Meetings published by the Board on March 27, 1998. Because of public interest in the project, workshops in Newcastle, Wyoming and Winona, Minnesota, not originally scheduled, were added to provide additional opportunities for public participation in the scoping process. Comment forms and the draft scope of study (draft scope) were provided to workshop attendees. On August 7, 1998, the Board published a Revised

¹This case was formerly entitled Dakota, Minnesota & Eastern Railroad Corporation -- Construction and Operation -- in Campbell, Converse, Niobrara, and Weston Counties, WY, Custer, Fall River, Jackson, and Pennington Counties, SD, and Blue Earth, Nicollet, and Steele Counties, MN. By decision served May 7, 1998, the Surface Transportation Board shortened the title for the sake of simplicity. As discussed below, the environmental review of this project will also include the section of the line DM&E proposes to rebuild as part of this project. Environmental review of the rebuild portion of the line would include the counties of Winona, Olmsted, Dodge, Steele, Waseca, Blue Earth, Brown, Redwood, Lincoln, and Lyon in Minnesota; Brookings, Kingsbury, Beadle, Hand, Hyde, Hughes, Stanley, Haakon, Jackson, Pennington, and Fall River in South Dakota.

Notice of Intent to Prepare an EIS, indicating that the U.S.D.A. Forest Service, U.S.D.I. Bureau of Land Management, and the U.S. Army Corps of Engineers would be participating as cooperating agencies. The scoping comment period, originally scheduled to conclude on July 10, 1998, was extended until September 8, 1998. However, comments filed after September 8, 1998 have been accepted and considered in this final scope of study (final scope) of the EIS. Changes made to the draft scope are detailed in the Response to Comments section of this notice.

In addition to issuing the final scope of the EIS, the Board and the cooperating agencies are providing a 30 day comment period for interested parties to submit comments on two new proposed alternatives: 1) the Modified Proposed Action, referred to as Alternative C, and 2) the City of Rochester, Minnesota's South Bypass Proposal. Both these new alternatives are discussed in detail below, along with information on how to submit written comments. This 30 day comment period is in addition to the comment period that will be provided on all aspects of the Draft EIS (DEIS) when that document is made available.

For Further Information Contact:

Ms. Victoria Rutson, SEA Project Manager, Powder River Basin Expansion Project, toll free at 1-877-404-3044.

Mr. Steve Thornhill of Burns & McDonnell, SEA's third party contractor, at (816) 822-3851.

Ms. Wendy Schmitzer, U.S.D.A. Forest Service, (307) 358-4690.

Mr. Bill Carson, U.S.D.I. Bureau of Land Management, (307) 746-4453.

Mr. Jerry Folkers, U.S. Army Corps of Engineers, (402) 221-4173.

SUPPLEMENTARY INFORMATION

Background: The proposed action, referred to as the Powder River Basin Expansion Project, would involve the construction and operation of 280.9 miles of new rail line and the rebuilding of 597.8 miles of existing rail line by DM&E, as described in the February 20, 1998 application for construction and operation authority for the project filed by DM&E and in the March 27, 1998 Notice of Intent to Prepare an EIS published in the Federal Register by the Board.

The Powder River Basin Expansion Project, as set forth by DM&E in its application filed with the Board, would involve the construction and operation of new rail facilities designed to provide access for a third rail carrier to serve the Powder River Basin's coal mines for transport of coal eastward and increase the operational efficiency of DM&E. New rail construction would include approximately 262.03 miles of rail line extending off DM&E's existing system near Wasta,

South Dakota, extending generally southwesterly to Edgemont, South Dakota, and then westerly into Wyoming to connect with existing coal mines² located south of Gillette, Wyoming. This portion of the new construction would traverse portions of Custer, Fall River, and Pennington Counties, South Dakota and Campbell, Converse, Niobrara, and Weston Counties, Wyoming.

New rail construction would also include an approximate 13.31 mile line segment at Mankato, Minnesota, within Blue Earth and Nicollet Counties. DM&E currently operates over trackage on both sides of Mankato, accessed by trackage rights on rail line owned and operated by Union Pacific Railroad Company (UP). The proposed Mankato construction would provide DM&E direct access between its existing lines and avoid operational conflicts with UP.

The final proposed segment of new rail construction would involve a connection between the existing rail systems of DM&E and I&M Rail Link. The connection would include construction and operation of approximately 2.94 miles of new rail line near Owatonna, Steele County, Minnesota. The connection would allow interchange of rail traffic between the two carriers.

In order to transport coal over the existing system, DM&E proposes to rebuild approximately 597.8 miles of rail line along its existing system. The majority of this, approximately 584.95 miles, would be along DM&E's mainline between Wasta, South Dakota, and Winona, Minnesota. This rebuild would cross Winona, Olmsted, Dodge, Waseca, Brown, Redwood, Lincoln, and Lyons Counties, as well as Steele, Blue Earth, and Nicollet Counties in Minnesota, and Brookings, Kingsbury, Beadle, Hand, Hyde, Hughes, Stanley, Haakon, and Jackson Counties in South Dakota. An additional approximate 12.85 miles of existing rail line between Oral and Smithwick, in Fall River County, South Dakota, would also be rebuilt. Rail line rebuilding would include rail and tie replacement, additional sidings, signals, grade crossing improvements, and other systems.

DM&E plans to transport coal as its principal commodity. However, shippers desiring rail access could ship other commodities in addition to coal over DM&E's rail line. Existing shippers along the existing DM&E system would continue to receive rail service.

Environmental Review Process: The Board is the lead agency, pursuant to 40 CFR 1501.5(c). SEA is responsible for ensuring that the Board complies with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321-4335, and related environmental statutes. SEA will supervise the preparation of the EIS. The U.S. Department of Agriculture Forest Service (USFS), the U.S. Department of Interior Bureau of Land Management (BLM), and the U.S. Army Corps of Engineers (COE) are cooperating agencies, pursuant to 40 CFR 1501.6. If the cooperating agencies find the EIS adequate, they will base their respective decisions on it. The EIS should include all of the

²Caballo, Belle Ayr, Caballo Rojo, Cordero, Coal Creek, Jacobs Ranch, Black Thunder, North Rochelle, North Antelope, Rochelle, and Antelope.

information necessary for decisions by the Board, USFS, BLM, and COE (collectively, the agencies).

On December 10, 1998, the Board found that DM&E had satisfied the transportation-related requirements of 49 U.S.C. 10901. In issuing its decision, the Board stated that it had considered only the transportation aspects of DM&E's proposed project. Environmental aspects would be considered after the completion of the environmental review process. Therefore, the Board emphasized, no final decision would be issued until all statutory requirements — both transportation and environmental — were satisfied. Construction cannot begin until the cooperating agencies have issued their decisions and the Board has issued its final decision.

The NEPA environmental review process is intended to assist the agencies and the public to identify and assess the potential environmental consequences of a proposed action before a decision on the proposed action is made. The agencies have developed and made available a draft scope of the EIS and provided a period for submission of written comments on it. At this time, the agencies are issuing this final scope of the EIS. In addition, the agencies are requesting comments on two new proposed alternatives: 1) the Modified Proposed Action, referred to as Alternative C, and 2) the City of Rochester's South Bypass Proposal. This comment period is in addition to the comment period that will be provided on all aspects of the DEIS when that document is made available.

Specifically, DM&E has developed a Modified Proposed Action, referred to as Alternative C. This proposal includes an alternative alignment in Wyoming and South Dakota for the mainline extension developed by DM&E in response to environmental issues and concerns raised by agencies, local landowners, and other interested parties. The Board and the cooperating agencies are seeking views of all commenters in order to ensure public input in the assessment of potential environmental impacts of this alternative.

Also, the City of Rochester has submitted a South Bypass Proposal to construct a rail line that would route rail traffic south around that city. The Board and the cooperating agencies are seeking additional information to assist in determining whether the bypass proposal is a reasonable and feasible alternative designed to meet the purpose and need of the applicant's proposed action. The Board and the cooperating agencies will consider the comments in determining whether Rochester's South Bypass Proposal is a reasonable and feasible alternative and will set forth their conclusions in the DEIS.

As stated, the agencies will prepare a DEIS for the proposed project. The DEIS will address those environmental issues and concerns identified during the scoping process and detailed in the scope of study. It will also contain a reasonable range of alternatives to the proposed action and recommended environmental mitigation measures.

The DEIS will be made available upon its completion for public review and comment. A Final EIS (FEIS) will then be prepared reflecting the agencies' further analysis and the comments on

the DEIS. In reaching their future decisions in this case, the Board and each cooperating agency will take into account the full environmental record, including the DEIS, the FEIS, and all public and agency comments received.

Consistent with its jurisdiction under the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995), the Board would normally only conduct an environmental analysis of the new construction and the increase in operations over DM&E's existing system. However, in this instance, the EIS analysis will also address construction related impacts associated with the rebuilding of DM&E's existing mainline from the point of connection with the new construction segments between Wasta, South Dakota and Winona, Minnesota. Because the COE, which as discussed above is a cooperating agency, requires such analysis, construction related impacts along the rail line to be rebuilt, including sidings and yard facilities, will be analyzed in this EIS to the extent necessary to satisfy the COE's permitting requirements under the Clean Water Act.

Proposed Action and Alternatives: Based on analysis conducted to date and comments received during the scoping process, the agencies have determined that the reasonable and feasible alternatives³ that will be discussed in the EIS are:

A. South Dakota/Wyoming New Rail Line Extension

(1) the "No Action Alternative," referred to as Alternative A. This alternative to include the no build alternative as well as the no action on federal lands alternative.

(2) the "Proposed Action," referred to as Alternative B. This alternative includes DM&E's preferred alternative as identified in its application to the Board, but modified in response to operational constraints discovered near Wall, South Dakota.⁴

³ Under NEPA, an applicant's goals are important in defining the range of feasible alternatives. NEPA does not require discussion of an alternative that is not reasonably related to the purpose of the proposal considered by the agencies. Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190 (D.C. Cir. 1991). Here, the proposed project is intended to facilitate the delivery of coal from the Powder River Basin of Wyoming eastward by DM&E. During scoping, numerous comments were received suggesting that the EIS evaluate alternative energy sources, such as nuclear, hydroelectric and wind, as an alternative to burning of coal. These alternatives, while offering legitimate means of generating energy, do not advance the applicant's goals of efficiently transporting coal and upgrading its current rail system, and therefore, will not be evaluated in the EIS.

⁴DM&E noted in its application that modifications to the existing system near Wall would likely be required as part of the proposed project. However, no modifications were specifically
(continued...)

(3) the “Modified Proposed Action,” referred to as Alternative C. This alternative would include an alternative alignment in Wyoming and South Dakota for the mainline extension developed by DM&E in response to environmental issues and concerns raised by agencies, local landowners, and other interested parties. Alternative C is designed to minimize potential environmental impacts. This alignment was not developed until after DM&E filed its application with the Board and after scoping workshops had been held. Therefore, this alignment has not yet been presented publicly on a broad scale for review and comment.⁵ To facilitate public review and comment regarding this alternative, the agencies will provide an additional 30 day comment period. A general description of the alignment for this alternative, together with a map, is set forth below (see “Description of Alternative C, the Modified Proposed Action”). Copies of maps of this alignment may be obtained through written request to the Board or by contacting the toll-free environmental hotline at 1-877-404-3044.

(4) the “existing transportation corridors alternative,” referred to as Alternative D. This alternative includes:

- utilization of the existing DM&E line westward to Rapid City, then southward to Crawford, Nebraska, then northward parallel to the existing Burlington Northern Santa Fe Railway Company (BNSF) line to Donkey Creek Junction, then south to the joint BNSF/UP line (Joint Line), following

⁴(...continued)

indicated at the time DM&E filed its application with the Board. As a result of more detailed engineering, DM&E has since determined that grade and curve considerations at this location would be prohibitive for the operation of unit coal trains and has proposed a modified plan to eliminate these problems. This new construction along new rail line right-of-way would be utilized by Alternatives B, C, or D. The new alignment would branch from DM&E’s existing system approximately 3 miles south of Wasta, just north of where the proposed new construction would begin. It would curve eastward, cross the Cheyenne River, turn northward to near Interstate 90. It would generally parallel I-90, approximately 0.5 mile to the south. Approximately 5 miles west of Wall the alignment would extend away from I-90, then turn northeasterly, crossing I-90 approximately 1.5 miles west of Wall. After crossing I-90, the alignment would curve to the east, joining with the existing system approximately 0.25 mile north of Wall.

⁵The applicant conducted numerous site visits and public meetings during the development of this alternative, including meeting with landowners potentially affected by this alignment and Federal and state agencies to discuss adjustments and ways to minimize impacts on environmental resources and individual landowners. Thus, some individuals, including potentially affected landowners, are already aware of the Alternative C alignment.

the Joint Line into the Powder River Basin and connecting to the mines, referred to as Alternative D1. This alternative would involve utilization and rebuilding of existing DM&E rail line and new construction immediately adjacent to the existing BNSF and Joint Lines.

- utilization of the existing DM&E line westward to Rapid City, then southward to Crawford, Nebraska, construction of new line westward to Crandall, Wyoming along a previously abandoned UP rail line right-of-way, then northward parallel to the existing into the Powder River Basin and accessing the mines, referred to as Alternative D2. This alternative would involve utilization and rebuilding of existing DM&E rail line and new construction between Crawford and Crandell and immediately adjacent to the existing Joint Line.

- utilization of the existing DM&E line westward to Rapid City, then southward to Crawford, Nebraska, then northward parallel to the existing BNSF line to near Newcastle, Wyoming, turning westward to parallel State Highway 450 to the Joint Line, then following the Joint Line north and south to access the mines, referred to as Alternative D3. This alternative would involve utilization and rebuilding of existing DM&E rail line and new construction parallel to the BNSF line northward from Crawford, new construction westward along State Highway 450, and new construction along the existing Joint Line to access the mines.

- construction of new rail line extending from DM&E's existing line near Wasta, South Dakota south and west to Edgemont, South Dakota⁶ and then northward parallel to the existing BNSF line to near Newcastle, Wyoming, turning westward to parallel State Highway 450 to the Joint Line, then following the Joint Line north and south to access the mines, referred to as Alternative D4. This alternative would involve new construction along new rail line right-of-way between Wasta and Edgemont, new construction parallel to the BNSF line northward from Edgemont, new construction westward along State Highway 450, and new construction along the existing Joint Line to access the mines.

- utilization of the existing DM&E line westward to Alto, South Dakota, approximately 10 miles east of Pierre, South Dakota, then southward to the

⁶The new construction portion of this alternative would involve the portions of both Alternative B and C between their points of diversion from DM&E's existing line near Wasta to where they would begin to parallel the existing BNSF line northwest of Edgemont.

former Milwaukee Road rail line right-of-way (now Dakota Southern Rail owned and operated by the State of South Dakota) near Draper, South Dakota, then westward utilizing the State-owned rail line right-of-way and grade to the point this railbed intersects DM&E's proposed new construction alignment approximately 2 miles south of State Highway 44 in Pennington County, South Dakota, then following the alignment proposed for the new construction into the Powder River Basin, referred to as Alternative D5. This alternative would involve approximately 40 miles of new construction, including a new rail bridge over the Missouri River, and the rebuilding of approximately 100 miles of former rail line on the existing State-owned right-of-way. This alternative would eliminate the need for approximately 30 miles of new construction south of Wasta and around Wall, South Dakota and the rebuilding of approximately 100 miles of existing DM&E rail line between Pierre and Wasta.

B. Rail Line Construction on New Right-of-Way Along DM&E's Existing Rail System UP Bypass at Mankato, Minnesota

(1) the "No Action Alternative," referred to as Alternative M1.

(2) the "Proposed Action," or "Southern Alternative," referred to as Alternative M2. This alternative would include the alternative identified by DM&E as the preferred alternative in its application to the Board and involves construction of new rail line in a loop south of Mankato to connect DM&E trackage on the west and east sides of Mankato.

(3) the "Existing Rail Corridor Alternative," or the "Middle Alternative," referred to as Alternative M3. This alternative would include construction of a new rail line connecting the ends of DM&E's existing system on either side of Mankato generally along and within an existing rail corridor through Mankato. This corridor is currently only occupied by UP and contains the UP line DM&E must currently operate over, via trackage right, for access between its existing rail lines east and west of Mankato.

(4) the "Northern Alternative," referred to as Alternative M4. This alternative would include an alignment connecting the two portions of DM&E's existing system through construction of new rail line in a loop north of Mankato and North Mankato.

C. I&M Connection at Owatonna, Minnesota

(1) the "No Action Alternative," referred to as Alternative O1.

(2) the “Proposed Action,” referred to as Alternative O2. This alternative would include the alternative identified by DM&E as the preferred alternative in its application to the Board and involves construction of a connecting rail line to allow interchange of rail traffic between DM&E and I&M Rail Link.

(3) the alternative alignment, referred to as Alternative O3. This alternative would include another alignment to the construction alternative proposed by DM&E in its application to the Board. It involves construction of a connecting rail line to allow interchange of rail traffic between DM&E and I&M Rail link approximately one mile west of Alternative O2.

In addition to the alternatives discussed above, the EIS will evaluate other subsequently identified alternatives determined reasonable and feasible in light of the purpose and need for the proposed action. This may include the City of Rochester’s South Bypass Proposal.

Public Participation: Scoping workshops were attended by over 1,000 people. Over 600 scoping comment forms and well over 1,000 letters raising environmental issues were received. As part of the environmental review process to date, the agencies have conducted broad public outreach activities to inform the public about DM&E’s proposal and to facilitate public participation. The agencies have consulted and will continue to consult with Federal, state, and local agencies, American Indian Tribal governments, affected communities, landowners, and all interested parties to gather and disseminate information about the proposal. In addition, comments continue to be accepted on all aspects of the environmental review process and potential environmental impacts. Moreover, the agencies are specifically requesting comments in this final scope on the Modified Proposed Action, referred to as Alternative C, and the City of Rochester’s South Bypass Proposal.

The agencies continue to encourage extensive public participation in the EIS process. Comments have been received and will continue to be accepted throughout the environmental process. To further assist in obtaining information about the environmental review process, the agencies have provided a toll-free environmental hotline (1-877-404-3044).

Response to Comments: The agencies reviewed and considered all comments received in their preparation of this final scope of the EIS. The final scope reflects changes made as a result of comments received addressing environmental issues and concerns, as well as comments on the draft scope, previously distributed at public scoping workshops and published in the Federal Register. Other changes in the final scope were made for clarification or as a result of additional analysis. Additions and modifications reflected in the final scope include:

- Analysis of construction impacts resulting from the rebuilding of the applicant’s existing system, including sidings and yard facilities (with alternative locations). Over 70 written and numerous oral comments requesting that this analysis be conducted were received. The

rebuilding of DM&E's existing line, and the construction of sidings and yard facilities on DM&E's existing right-of-way, would not normally be included in an EIS prepared by the Board. However, as discussed above, because one of the cooperating agencies — the U.S. Army Corps of Engineers (COE)— requires such analysis, construction related impacts along the rail line to be rebuilt will be analyzed in this EIS to the extent necessary to satisfy the COE's permitting requirements under the Clean Water Act.

- Sidings and yard facilities (with alternative locations) for the new construction. The draft scope did not explicitly note that these facilities would be addressed in the EIS. As a point of clarification, sidings, yards, and other new rail facilities along the new construction portion of the project will be included in the EIS analysis.
- Analysis of air quality impacts related to fugitive coal dust. Over 350 written and numerous oral comments were received concerning the potential impacts of fugitive coal dust as it applies to both air quality and fire hazard. In response, the agencies have added the analysis of these potential impacts from coal dust to the final EIS scope.
- Analysis of downline impacts. The draft scope indicated that the EIS would address the potential environmental impacts associated with increased levels of rail traffic above the Board's thresholds, which would include DM&E's existing mainline between Wasta, South Dakota, eastward to its termination at Goodview, Minnesota. Because of the proximity of the communities of Goodview and Winona, Minnesota, the reasonably foreseeable potential impact of the project on them due to their location at the terminus of DM&E's system, and the numerous requests to include them in the analysis, the EIS will be expanded to include an appropriate analysis of those portions of the UP and Canadian Pacific (CP) lines potentially impacted by this project within the communities of Goodview and Winona, Minnesota.
- Analysis of increases in barge traffic. In its application, DM&E indicated a portion of the coal transported by the proposed project could be available for delivery by barge to utilities along the Mississippi and Ohio Rivers and within its identified core market area. Subsequently, during scoping, several written and oral comments asked that the impacts of increased barge traffic on the Mississippi River, specifically the Upper Mississippi River National Fish and Wildlife Refuge (Refuge), as a result of DM&E's proposal, be addressed in the EIS.

Based on more information from the applicant concerning potential impacts to barge traffic from DM&E's anticipated rail operations, it appears that barge loading facilities currently available could not accommodate unit coal trains of the type DM&E would be operating. Additionally, DM&E has no estimates of the reasonably foreseeable amount of coal to be transported by barge, as this would depend on market demand from a specific segment of its identified core market. Any projections of potential coal volumes to be

transported by barge, therefore, are speculative at this time. In addition, such projections are dependent on the development of facilities capable of loading barges from unit coal trains.⁷

Because there is a high level of uncertainty about both the future development of a barge loading facility and the amount of coal that DM&E would transload to barge, any related impact to the Mississippi River generally and the Refuge specifically does not meet the “reasonably foreseeable” standard set by the Council on Environmental Quality (CEQ) for impacts analysis. See 40 CFR 1508.8; Forty Questions No. 18. Increases in barge traffic as a result of DM&E’s proposal, therefore, will not be evaluated in this EIS.

- Vehicular traffic levels for evaluation. The air quality and transportation systems sections of the draft scope indicated grade crossings with vehicular traffic levels of 5,000 vehicles per day or more would be included in these analyses. In prior cases, this level of traffic has been considered by the lead agency, the Board, to be a conservative and appropriate baseline. Over 300 written and numerous oral comments were received pertaining to vehicular delay and access, particularly as they apply to the issues of air quality and transportation. A few commenters requested reduction in the traffic levels for evaluation in the EIS. The Board, in consultation with its cooperating agencies, has determined that a grade crossing traffic volume of 5,000 vehicles per day is appropriate for EIS evaluation. However, in response to concerns that have been raised, the Board will expand its analysis of impacts at grade crossings to specific crossings of less than 5,000 vehicles per day if unique circumstances discovered during the course of the environmental review process make it appropriate to include the crossings.
- Safety analysis. Based on comments received, the agencies have determined the EIS analysis will include the potential safety impacts of the project on affected facilities, such as the Federal Medical Center in Rochester, Minnesota.
- Analysis of vibration. Over 200 written and numerous oral comments were received expressing concern for the potential impacts resulting from train induced vibration. In response to these comments the agencies have revised the final scope of the EIS to include an analysis of the potential impacts of vibration, including impacts to structures, sensitive equipment, and alarm systems.
- Analysis of aesthetics. The analysis of aesthetics in the EIS will include the potential impacts of the proposed new rail line construction on areas determined to be of high visual

⁷Should a barge facility be developed, it would likely require an environmental review under NEPA. Such a review would likely require evaluation of the impacts of increased barge traffic on the river, including impacts to the Refuge, resulting from the development and operation of such a facility.

quality, as discussed in the draft scope. Based on comments received, the agencies clarify that the following criteria will be considered in evaluating areas of high visual quality: perception of isolation, feeling of vastness, and the wide open nature of the area.

- Quality of life issues. Several written and numerous oral comments were received regarding various potential quality of life impacts, including division of communities, isolation of residences, access to destinations, annoyance from increased noise and vibration, and traffic delays. The final scope has been clarified to include those quality of life issues involving division of communities, isolation of residences, access to destinations and similar concerns in the socioeconomic section. Annoyance from increased noise and vibration will be addressed in the noise section and annoyance from traffic delays will be covered within the transportation systems section.
- Distinction between public versus private lands. The agencies have clarified the land use section of the final scope to define the evaluation of existing land use patterns to include identification of private and public lands and the potential project impacts related to both.
- Potential impacts to utilities. The agencies have added to the land use evaluation of the final scope of the EIS an evaluation of potential project impacts on utilities, including pipelines, electrical lines, telephone lines, and any others in the vicinity of the project.
- Evaluation of mineral resources. The geology and soils section of the final scope of the EIS has been expanded to include an evaluation of the potential impacts of the project on mineral resources within the project area.
- Placement of paleontological resources evaluation. The draft scope included the evaluation of potential project impacts to paleontological resources within the cultural resources section. Based on comments received during scoping, the agencies have moved the discussion of paleontological resources to the geology and soils section of the final scope.

Additional Comment Period on the “Modified Proposed Action,” referred to as Alternative C and City of Rochester’s South Bypass Proposal

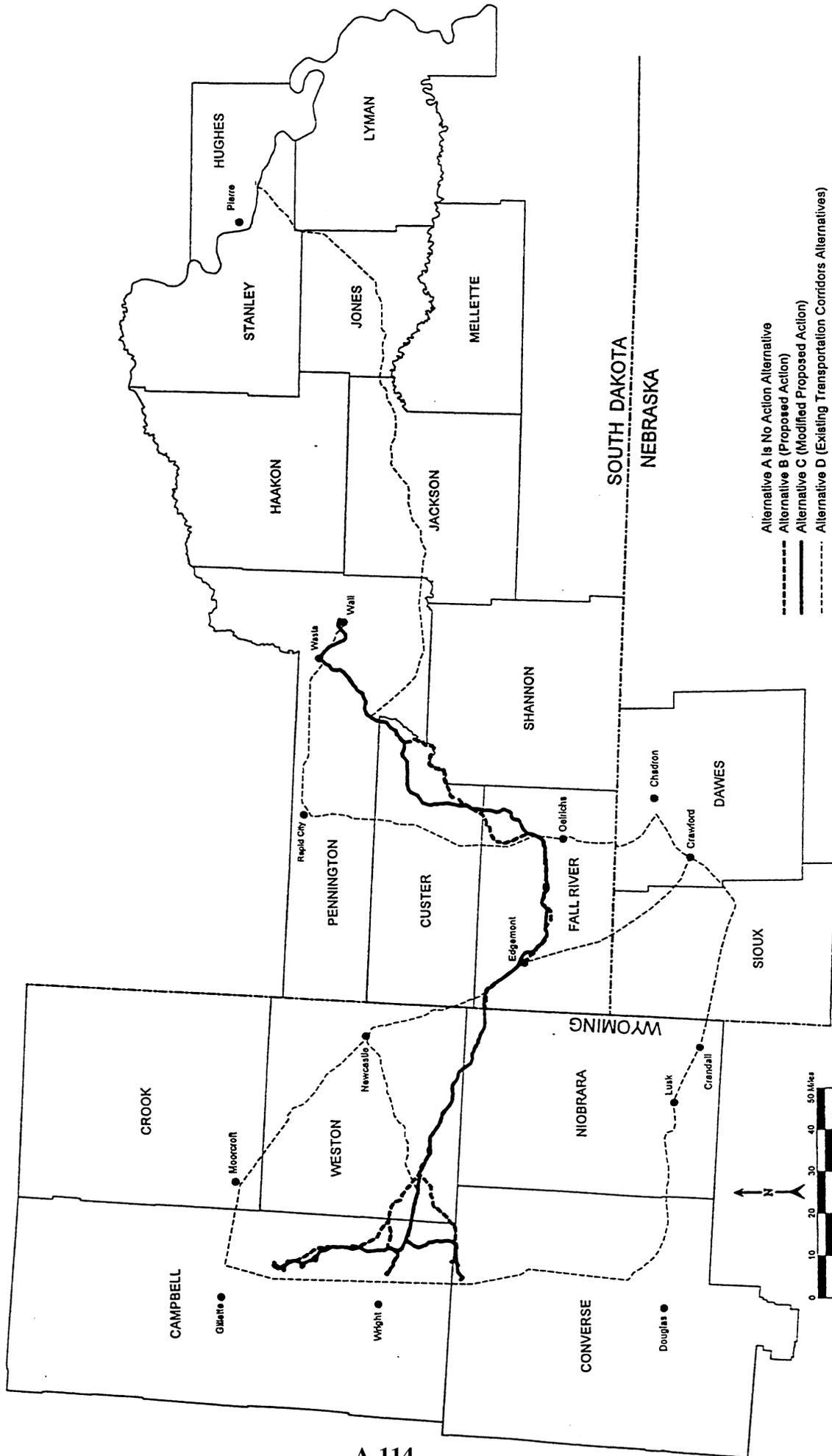
As stated above, in this final scope the agencies are providing an opportunity for all interested parties to submit their views during a 30 day comment period on the potential environmental impacts of the “Modified Proposed Action,” referred to as Alternative C. This comment period is in addition to the further comment period that will be provided on all aspects of the DEIS when it is issued. With regard to the City of Rochester’s South Bypass Proposal, the agencies will consider the additional information submitted during the 30 day comment period to make a final determination of whether the South Bypass Proposal is a reasonable and feasible alternative designed to meet the purpose and need of the applicant’s proposed action. The agencies

have provided a general description of both the Modified Proposed Alternative, known as Alternative C, and the City of Rochester's South Bypass Proposal below:

Description of Modified Proposed Action," referred to as Alternative C

Alternative C, the Modified Proposed Action, would diverge from DM&E's existing system approximately three miles south of Wasta, South Dakota. It would generally follow the Cheyenne River along the sideslope of the floodplain on the west side of the river. It would cross State Highway 44 approximately 2 miles west of where the highway crosses the Cheyenne River and continue southward along Spring Creek for approximately 10 miles. Alternative C would cross Spring Creek where the creek bends to the west, with the rail line alternative extending in a generally westward direction for approximately 12 miles before turning southward. It would extend southward for approximately 16 miles, crossing the Cheyenne River just south of the Custer-Fall River County Line. Alternative C would continue southward for 5 miles, then curve westward to join with DM&E's existing line just north of Smithwick, South Dakota. It would utilize this existing rail line for approximately four miles, then branch from the existing line, extending westward for approximately 28 miles, then curve northward, passing approximately 2 miles east of Edgemont, South Dakota. Approximately 2 miles north of Edgemont, Alternative C would parallel the existing BNSF for approximately 13 miles before crossing over the BNSF line and extending westward into Wyoming, following the Cheyenne River for approximately 11 miles. After crossing U.S. Highway 85, Alternative C would extend in a generally northwest direction, crossing Black Thunder Creek approximately 4 miles south of where State Highway 450 crosses Black Thunder Creek. Alternative C would extend westward, generally parallel to and south of State Highway 450, along Little Thunder Creek. Approximately 4 miles east of the Jacob's Ranch Coal Mine, Alternative C would split and one branch would extend north along the east side of the region's coal mines, converging with the existing joint rail line in the vicinity of the Belle Ayr and Caballo Rojo mines. The southern branch would extend southward, also along the east side of the areas coal mines, accessing the North Antelope, Rochelle, and Antelope Coal Mines.

DM&E RAILROAD CORPORATION
POWDER RIVER BASIN EXPANSION PROJECT ALTERNATIVES



City of Rochester's South Bypass Proposal

On January 6, 1999, the City of Rochester, Minnesota (the City) requested that SEA consider a south bypass corridor as an alternative to DM&E's proposed plan to rehabilitate its existing rail line and operate additional rail traffic, primarily coal trains, through Rochester. As part of its submission, the City has attached an engineering report commissioned jointly by the City and Olmsted County.⁸ The report, entitled Mitigation of Safety and Environmental Issues Associated with The Dakota Minnesota & Eastern Railroad's Proposed Expansion Through the City of Rochester and Olmsted County, Minnesota, contains information on the southern bypass route and proposed mitigation for the existing DM&E rail corridor.

Description of Proposed South Bypass

The report states that its intent is to "assess the impacts the additional train traffic would have on the communities and the environment within the county and, if appropriate, recommend reasonable, effective, and practical alternatives for mitigation of these impacts." Report p. 2. To that end, the report states that after assessing the increased potential for train/vehicle collisions at grade crossings if DM&E's proposal were to be approved, several options for mitigating these potential safety impacts were considered, including construction of a depressed trainway, construction of a tunnel beneath the City, construction of a north bypass, and construction of a south bypass. According to the report, the trench, tunnel, and north bypass options were found not to be viable so the report focused on a south bypass and an existing corridor improvement option.⁹ Report p. 6.

The report describes the south bypass as follows: the route would be 34.1 miles long and would diverge south from DM&E's mail track in Dodge County at milepost 61.1, approximately .8 miles west of the Olmsted County line west of Byron, Minnesota. The route then would travel due south approximately 9.5 miles through portions of Salem and Rock Dell Township. The line would then travel generally eastward through High Forrest, Marion, Pleasant Grove, and Eyota Townships. The line would reconnect with DM&E's existing system at milepost 37.5, approximately 8.2 miles west of the east Olmsted County line.

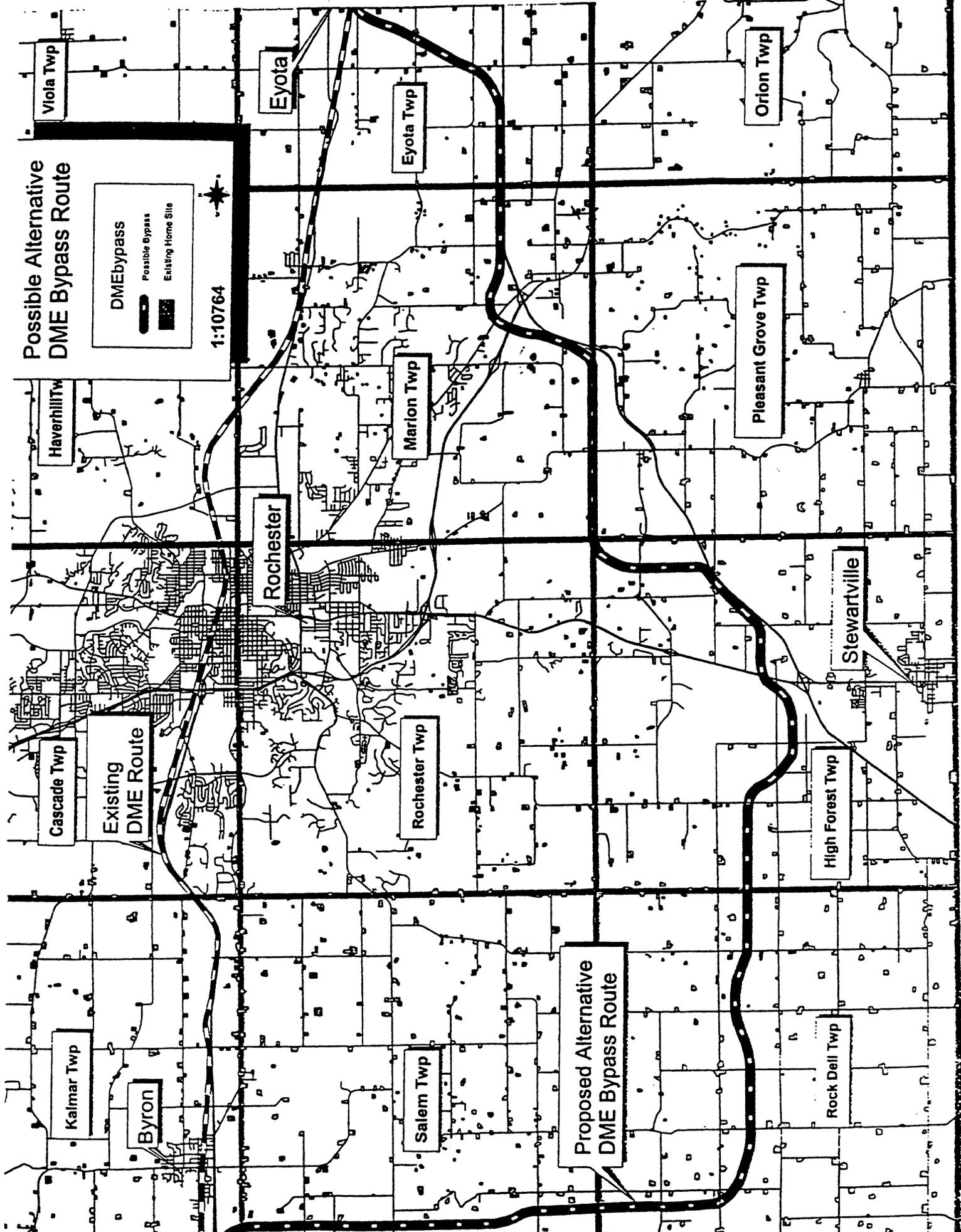
⁸The report was prepared by the engineering firms of Toltz, Duvall, Anderson and Associates of St. Paul, Minnesota and its subconsultant, Black and Veatch located in Overland, Kansas. A copy has been placed in the environmental record in this case. We urge interested parties or members of the public to review the report itself. We explain below how to obtain a copy of the report.

⁹The report notes, however, that the City is continuing to gather data on the feasibility of the tunnel option. See p. 6

According to the report, the south bypass would require acquisition of approximately 887 acres for a 200-foot wide new right-of-way. Twelve households would be located within 500 feet of the rail centerline. Fifty-one households would be within 1200 feet of the centerline. The bypass would cross forty-two intermittent creeks or waterways, none of which are major according to the report's engineers. Thirty-eight roadways (seventeen of which are paved and eighteen of which have average daily traffic counts less than 100 vehicles) would be crossed.

The report also sets forth details of design criteria, including curves and profile grades, track specifications, embankment and side slopes, bridges, highway crossings and signals, fencing, cut and fill requirements, wetlands, and endangered species. Report pp. 7-13. In addition, the report includes an estimated cost of \$115,334,000 for acquisition and construction of the south bypass. Report p. 12.

The report concludes that the south bypass would effectively mitigate adverse impacts to the City and Olmsted County by avoiding population areas. In addition, the report states that the bypass would present operational advantages to DM&E, such as improved curvature, a wider right-of-way, and increased opportunities for future development and additional trackage. Report p. 14. The report notes that the south bypass route would not require DM&E to abandon service to its existing customers, and that light local rail traffic could continue over DM&E's present line through the City. Report p. 15.



Possible Alternative
DME Bypass Route

DMEbypass
 Possible Bypass
 Existing Home Site

1:10764

Proposed Alternative
DME Bypass Route

City of Rochester's Proposed Mitigation of DM&E's Existing Corridor

The report also proposes a number of improvements to DM&E's existing corridor through the City¹⁰ designed to mitigate potential environmental impacts if DM&E's proposal were to be approved.¹¹ The improvements include replacing all of the main track with 136-lb continuously welded rail, replacing all poor or marginal timber cross ties, replacing all turnouts along the main track, installing power switch machines and switch heaters at all heavily used locations, replacing all timber trestle bridges, replacing or strengthening all of the steel bridges to support heavier axle loads, cleaning and installing additional rock ballast and re-profiling the existing line, cleaning drainage ditches and repairing culverts and marginal embankments, and replacing all at grade crossing surfaces following reconstruction of the track.

The report goes on to recommend additional work to reduce potential safety, environmental, congestion, and quality of life problems. Moreover, the report recommends construction of eleven separated grade crossings, closure of seven grade crossings, and protection with train activated flashing light signal and automatic gate arms at the seventeen remaining crossings. Other recommended mitigation includes sound barrier walls, fencing, and pedestrian crossings. The report includes an estimated cost of \$119,300,000 for the recommended mitigation of DM&E's existing corridor. Report p. 21.

Public Participation and Request for Comments

Pursuant to NEPA, the EIS must explore and evaluate a reasonable range of alternatives designed to meet the purpose and need of the proposal. If alternatives have been eliminated from detailed study, the EIS must briefly discuss why these alternatives have been discarded. See 40 CFR 1502.14(a); Forty Questions No. 1(a). CEQ's guidance states that "[r]easonable alternatives include those that are practical or feasible from the technical and economic standpoint and using commonsense, rather than simply desirable from the standpoint of the applicant." Forty Questions No. 2a.

The City's submission contains sufficient information for the Board, in consultation with its cooperating agencies, to make a preliminary determination that the south bypass may be a feasible alternative routing. However, we do not yet have the benefit of the applicant's views, nor those of

¹⁰The report defines the corridor as DM&E's 31.0 mile long main track traveling east-west through Olmsted County and .8 miles located in Dodge County. Report p. 15.

¹¹The DEIS will assess potential environmental impacts that would result from rebuilding DM&E's existing line and operating a maximum of 37 trains, including 34 unit coal trains over the rebuilt line. The DEIS will assess proposals for mitigation of impacts and independently develop recommended mitigation measures.

the affected members of the public or other interested parties as to the feasibility of the south bypass, or whether it would simply shift to different communities and populations the potential environmental consequences of the applicant's proposed route. To ensure that the agencies have as much information as possible on the south bypass in preparing the DEIS, SEA has decided to provide an opportunity for interested parties and members of the public to submit comments on the feasibility of the City's proposal prior to the issuance of the DEIS.¹²

In addition, as discussed above, the agencies are seeking comments on the potential environmental impacts of the "Modified Proposed Action," referred to as Alternative C.

Comments on Alternative C and on the City's proposal can be submitted to the Surface Transportation Board within 30 days of publication of the final scope and request for comments in the Federal Register. Comments should be sent to:

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

To ensure proper handling of your comments, you must mark your submission:

Attention: Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing

The DEIS will include an appropriate discussion of the south bypass and recommended mitigation and a determination as to whether the bypass would be a reasonable and feasible alternative. The public then will have the opportunity to review and comment on these conclusions regarding the south bypass during the comment period on the DEIS. The DEIS will contain information on the agencies' conclusions regarding the City of Rochester's South Bypass Proposal. An opportunity for further comment will be provided at that time.

¹²Detailed information, including maps, of Rochester's proposed south bypass and mitigation of DM&E's existing corridor may be obtained from:

The Rochester-Olmsted County Department of Planning
2122 Campus Drive, SE
Rochester, MN 55904
(507) 285-8232

Agency Actions: Based on CEQ's and each agencies' regulations implementing NEPA, the draft scope, oral and written comments received, and all other information available to date, the agencies have prepared this final scope of the EIS. This final scope of the EIS will be distributed to all Parties of Record, interested parties and American Indian Tribal governments, and appropriate Federal, state, and local agencies.

Based on the agencies' environmental analysis, review of all information available to-date, and consultations with appropriate American Indian Tribal governments and agencies, the agencies will prepare the DEIS. The DEIS will address relevant environmental concerns, as generally described in this final scope of the EIS and recommend appropriate environmental mitigation. The agencies will afford an opportunity for public comments on the DEIS. Once comments have been received and assessed, the agencies will issue the FEIS, which will respond to comments and, if appropriate, set forth additional analysis and information. Following the close of the environmental record, the Board and each of the cooperating agencies will then issue final decisions on the proposed action.

Environmental Impact Analysis

Analysis in the EIS will address, as appropriate, the potential environmental impacts of proposed activities associated with the construction and operation of DM&E's new rail facilities, as well as construction and operation activities associated with the rebuilding of DM&E's existing mainline. The scope of the analysis will include the following activities:

1. Proposed construction of new rail mainline extension to access coal mines south of Gillette, Wyoming.
2. Proposed construction of new rail mainline to bypass DM&E's existing trackage rights on UP in Mankato, Minnesota.
3. Proposed construction of new rail line connection between DM&E and I&M Rail Link south of Owatonna, Minnesota.
4. Proposed upgrade along DM&E's existing track from the point of connection with new construction between Wasta, South Dakota and Winona, Minnesota.

Impact Categories

The EIS will address potential impacts from the proposed construction and operation of new rail facilities on the human and natural environment. Impact areas addressed will include the categories of land use, biological resources, water resources, geology and soils, air quality, noise, energy resources, socioeconomics as they relate to physical changes in the environment, safety, transportation systems, cultural and historic resources, recreation, aesthetics, environmental justice,

and cumulative effects. The EIS will include a discussion of each of these categories as they currently exist in the project area and address the potential impacts from the proposed project on each category as described below.

The EIS analysis will also address construction and operation related impacts associated with the rebuilding of DM&E's existing mainline from the point of connection with the new construction segments between Wasta, South Dakota and Winona, Minnesota. Such action, being confined within existing rail right-of-way and on existing rail property, would not normally be included in an EIS prepared by the Board. Only the potential impacts associated with rail traffic increases on DM&E's existing system resultant from the construction and operation of the proposed project would be evaluated. However, because the U.S. Army, Corps of Engineers, a cooperating agency, requires such analysis to satisfy its permitting requirements under the Clean Water Act and comments requesting such analysis be conducted were received, analysis of construction related impacts along the rail line to be rebuilt will be included in this EIS. In addition to the analysis of potential project impacts related to operational increases in rail traffic (noise, air quality, transportation, safety), the construction related impacts to land use, biological resources, water resources, geology and soils, air quality, noise, socioeconomics, safety, hazardous materials, transportation systems, cultural and historic resources, environmental justice, and cumulative effects will be analyzed as discussed below.

1. Land Use

The EIS will:

- A. Describe existing land use patterns, management, and ownership (private and public) within the project area for new rail line construction and along the existing rail line to be rebuilt and identify those land uses and the amounts of each potentially impacted by new rail line construction and rail line rebuild.
- B. Describe the potential impacts associated with the proposed construction and operation of new rail line and existing rail line to be rebuilt to cropland, pastureland, rangeland, grassland, woodland, developed land, school endowment land, BLM lands,¹³ Forest Service lands, state lands, utilities, and any other land uses identified within the project area. Such potential impacts may include but not be limited to impacts to farming/ranching activities, introduction of noxious weeds, fire hazard, incompatibility with existing land uses, relocation of residences or businesses, and conversion of land to railroad uses.
- C. Propose mitigative measures to minimize or eliminate potential adverse project impacts to land use, as appropriate.

¹³This term includes those lands for which the BLM administers the land and/or the mineral estate.

2. Biological Resources

The EIS will:

- A. Describe the existing biological resources within the project area for new rail line construction and along the existing rail line to be rebuilt, including vegetative communities, wildlife and fisheries, federally threatened or endangered species, and any sensitive vegetation and wildlife identified and the potential impacts to these resources resultant from construction and operation of new rail line and the existing rail line to be rebuilt.
- B. Describe the wildlife sanctuaries, refuges, and national or state parks, forests, or grasslands within the project area for new construction and along the existing rail line to be rebuilt and the potential impacts to these resources resultant from construction and operation of new rail line and existing rail line to be rebuilt.
- C. Propose mitigative measures to minimize or eliminate potential adverse project impacts to biological resources, as appropriate.

3. Water Resources

The EIS will:

- A. Describe the existing surface and groundwater resources within the project area for new rail line construction and along the existing rail line to be rebuilt, including lakes, rivers, streams, stock ponds, wetlands, aquifers, wells, and floodplains and the potential impacts on these resources resultant from construction and operation of new rail line and the existing rail line to be rebuilt.
- B. Describe the existing uses of water resources in the project area for irrigation, livestock, residential, and municipal water supply.
- C. Describe the permitting requirements for the proposed new rail line construction and existing rail line rebuild in regard to wetlands, stream crossings, water quality, and erosion control.
- D. Propose mitigative measures to minimize or eliminate potential adverse project impacts to water resources and users, as appropriate.

4. Geology and Soils

The EIS will:

- A. Describe the geology, soils, and mineral resources found within the project area for new rail line construction and along the existing rail line to be rebuilt, including unique or problematic geologic formations or soils, prime farmland soils, and recoverable mineral resources.

- B. Describe measures employed to avoid or construct through unique or problematic geologic formations or soils.
- C. Describe the impacts of new rail line and existing rail line rebuild construction activities on prime farmland soils.
- D. Describe the potential impacts to mineral resources within the project area for new construction and along the existing rail line to be rebuilt.
- E. Describe the potential general impacts to paleontological resources in the project area for new construction and along the existing rail line to be rebuilt due to new rail line construction and existing rail line rebuild activities, if necessary and required.
- F. Propose mitigative measures to minimize or eliminate potential adverse project impacts to geology, soils, mineral resources, and paleontological resources, as appropriate.

5. Air Quality

The EIS will:

- A. Discuss the existing air quality in the project area for the new construction, along the existing rail line to be rebuilt, and those portions of the UP and CP rail systems within Goodview and Winona, Minnesota.
- B. Evaluate rail air emissions on new rail line, the existing rail line to be rebuilt, and those portions of the UP and CP rail systems within Goodview and Winona, Minnesota that exceed the Board's environmental thresholds in 49 CFR 1105.7(e)(5)(I), in an air quality attainment or maintenance area as designated under the Clean Air Act . The threshold anticipated to apply to this project is eight trains per day on any segment of new rail line.
- C. Evaluate rail air emissions on new rail line, the existing rail line to be rebuilt, and those portions of the UP and CP rail systems within Goodview and Winona, Minnesota, if a Class I or non-attainment area as designated under the Clean Air Act is affected. The threshold for Class I and non-attainment areas anticipated to apply to this project is 3 trains per day or more.
- D. Evaluate the potential air quality impacts associated with the increased availability and utilization of Powder River Basin coal.
- E. Discuss the net increase in emissions from increased railroad operations associated with the proposed operations over new rail line, the existing DM&E system and other

rail systems as appropriate, including those portions of the UP and CP systems within Goodview and Winona, Minnesota.

- F. Discuss the potential air emissions increases from vehicle delays at new and existing grade rail crossings where the rail crossing is projected to experience an increase in rail traffic over the threshold described above for attainment, maintenance, Class I, and non-attainment areas and that have an average daily vehicle traffic level of over 5,000. Emissions from vehicle delays at new and existing grade rail crossings and idling diesel engines and coal dust will be factored into the emissions estimates for the affected area, as appropriate.
- G. Describe the potential air quality impacts of emissions from idling diesel locomotives and coal dust produced during train operation.
- H. Describe the potential air quality impacts resulting during new rail line and existing rail line rebuild construction activities.
- I. Propose mitigative measures to minimize or eliminate potential adverse project impacts to air quality, as appropriate.

6. Noise

The EIS will:

- A. Describe existing noise receptors and conditions in the project area for new rail line construction, along the existing rail line to be rebuilt, and the portions of the UP and CP rail lines within Goodview and Winona, Minnesota.
- B. Describe the potential noise impacts during new and existing rail line construction and rebuilding.
- C. Describe potential noise impacts of new and rebuilt existing rail line operation for those areas that exceed the Board's environmental threshold of eight or more trains per day as a result of the proposed project along the proposed new construction, the existing rail line to be rebuilt, and along the portions of the UP and CP rail lines within Goodview and Winona, Minnesota.
- D. Describe the potential impacts of the new and rebuilt existing rail line operation due to vibration, both noise and ground-borne along the proposed new construction, the existing rail line to be rebuilt, and along the portions of the UP and CP rail lines within Goodview and Winona, Minnesota.
- E. Propose mitigative measures to minimize or eliminate potential adverse project impacts to noise and vibration receptors, as appropriate.

7. Energy Resources

The EIS will:

- A. Describe the transport of energy resources and recyclable commodities on the existing DM&E system.
- B. Describe the potential environmental impact of the new rail line and rebuilt existing rail line on the transportation of energy resources and recyclable commodities.
- C. Describe the environmental impacts of operation of the new rail line and rebuilt existing rail line on utilization of the nations energy resources.
- D. Propose mitigative measures to minimize or eliminate potential adverse project impacts to the transportation of energy resources and recyclable commodities, as appropriate.

8. Socioeconomics

The EIS will:

- A. Describe the socioeconomic conditions within the area of new construction alternatives and along the existing line to be rebuilt.
- B. Address socioeconomic issues shown to be related to changes in the physical environment as a result of the proposed action, including quality of life issues such as division of communities, isolation of residences, access to destinations and similar concerns.
- C. Propose mitigative measures to minimize or eliminate potential adverse project impacts to socioeconomics, as appropriate.

9. Safety

The EIS will:

- A. Describe rail/highway grade crossing safety factors at new grade crossings, as appropriate.
- B. Describe rail/highway grade crossing safety factors at existing grade crossings along the portion of DM&E's system to be rebuilt and those portions of the UP and CP systems within Goodview and Winona, Minnesota.
- C. Describe the potential for increased probability of train accidents, derailments, and train/vehicular accidents at new and existing grade crossings, as appropriate.
- D. Describe the potential for disruption and delays to the movement of emergency vehicles across the new rail line, existing rail line to be rebuilt, and those portions of

the UP and CP systems within Goodview and Winona, Minnesota due to new rail line construction and operation.

- E. Describe the changes at existing grade crossings implemented to increase safety at existing grade crossings due to increased rail operations on the DM&E system. Such changes would include signalization upgrades and conversion of grade crossings to grade separated crossings.
- F. Propose mitigative measures to minimize or eliminate potential adverse project impacts to safety, as appropriate.

10. Hazardous Materials

The EIS will:

- A. Describe any know hazardous materials sites along the preferred and alternative construction alignments and the existing rail line to be rebuilt.
- B. Describe the transport of any hazardous materials over the existing DM&E system and those portions of the UP and CP rail systems within Goodview and Winona, Minnesota.
- C. Describe the potential impacts to hazardous materials sites along the preferred and alternative alignments.
- D. Describe the potential impacts to the transport of any hazardous materials over the existing DM&E system, new rail line proposed for construction, and those portions of the UP and CP rail systems within Goodview and Winona, Minnesota.
- E. Propose mitigative measures to minimize or eliminate potential adverse project impacts to hazardous materials and the transport of any hazardous materials, as appropriate.

11. Transportation Systems

The EIS will:

- A. Describe the potential effects of new rail line construction and operation on the existing transportation network in the project area including:
 - (1) impact to the existing DM&E system operations
 - (2) impacts to other rail carriers' operations
 - (3) vehicular delays at new grade crossings for those crossings having average daily vehicle traffic of 5,000 or more and
 - (4) vehicular delays at existing grade crossings that are part of the portion of the existing system proposed to be rebuilt for those crossings having average daily vehicle traffic of 5,000 or more.

- (5) vehicular delays at existing grade crossings along those portions of the UP and CP rail systems within Goodview and Winona, Minnesota for those crossings having average daily vehicle traffic of 5,000 or more.
 - (6) vehicular delays at existing and new grade crossings having average daily traffic of less than 5,000 vehicles but have unique circumstances that make such evaluation appropriate.
- B. Propose mitigative measures to minimize or eliminate potential adverse project impacts to transportation systems, as appropriate.

12. Cultural and Historic Resources

The EIS will:

- A. Describe the potential impacts to historic structures or districts previously recorded and determined potentially eligible, eligible, or listed on the National Register of Historic Places within or immediately adjacent to the right-of-way for the preferred and alternative construction alignments and the existing rail line to be rebuilt.
- B. Describe the potential impacts to archaeological sites previously recorded and either listed as unevaluated or determined potentially eligible, eligible, or listed on the National Register of Historic Places within the right-of-way for the preferred and alternative construction alignments and the existing rail line to be rebuilt.
- C. Describe the potential impacts to historic structures or districts identified by ground survey and determined potentially eligible or eligible for listing on the National Register of Historic Places within or immediately adjacent to the existing rail line to be rebuilt.
- D. Describe the potential impacts to traditional cultural properties and religious use areas, sacred sites, cultural landscapes, and collection areas for religious and ceremonial plants.
- E. Propose mitigative measures to minimize or eliminate potential adverse project impacts to cultural and historic resources, as appropriate.

13. Recreation

The EIS will:

- A. Describe the existing recreational opportunities and activities present and undertaken in the project area for the new construction and along the existing rail line to be rebuilt.

- B. Describe the potential impacts of the proposed new rail line construction and operation on the recreational opportunities and activities in the project area for the new construction and along the existing rail line to be rebuilt.
- C. Propose mitigative measures to minimize or eliminate potential adverse project impacts to recreation, as appropriate.

14. Aesthetics

The EIS will:

- A. Describe any areas identified or determined to be of high visual quality (components of which may include the wide open nature of the area, the perception of isolation, and feeling of vastness), wilderness areas, or waterways designated as wild and scenic within the project area for the new construction and along the existing rail line to be rebuilt.
- B. Describe the potential impacts of the proposed new rail line construction and existing rail line rebuild on any areas identified or determined to be of high visual quality.
- C. Describe the potential impacts of the proposed new rail line construction and existing rail line rebuild on any designated wilderness areas.
- D. Describe the potential impacts of the proposed new rail line construction and existing rail line rebuild on any waterways considered for or designated as wild and scenic.
- E. Propose mitigative measures to minimize or eliminate potential adverse project impacts to aesthetics, as appropriate.

15. Environmental Justice

The EIS will:

- A. Describe the demographics in the project area and the immediate vicinity of the proposed new construction and along the existing rail line to be rebuilt, as appropriate, including communities potentially impacted by the construction and operation of the proposed new rail line and existing rail line to be rebuilt.
- B. Evaluate whether new rail line and existing rail line construction, rebuild, or operation activities would have a disproportionately high adverse impact on any minority or low-income groups.
- C. Propose mitigative measures to minimize or eliminate potential adverse project impacts to minority or low-income groups, as appropriate.

16. Cumulative Effects

The EIS will discuss cumulative effects of the construction and operation of the new rail line and DM&E's existing system.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary

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**Notice to the Parties - Extension of Comment Period
for Interested Communities to Develop Bypass Proposals**

Decision No. 30163

April 20, 1999

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30163
SEA

SERVICE DATE - APRIL 20, 1999

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33407

Decided: April 14, 1999

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

NOTICE TO THE PARTIES:

On March 10, 1999, the Final Scope of Study for the Environmental Impact Statement (EIS) and Request for Comments on 1) the Modified Proposed Action, referred to as Alternative C, and 2) the City of Rochester, Minnesota's South Bypass Proposal was issued in this proceeding. The Final Scope provided a 30 day comment period for interested parties to submit comments on the two new proposed alternatives listed above, while making it clear that the 30 day comment period, which was due to expire on April 10, 1999, was in addition to, not a substitute for, the comment period that will be provided on all aspects of the Draft Environmental Impact Statement (DEIS) when that document is made available.

The Board and cooperating agencies have received requests to extend the April 10, 1999 comment date. Some of the requests seek an extension in which to comment on a number of potential environmental impacts and others seek additional time to permit development of bypass alternative proposals.

As discussed below, we will provide a limited additional comment period for interested communities to develop bypass proposals. As we stated in the Final Scope, we are mindful of our obligations under the National Environmental Policy Act, 16 U.S.C. 4321-4335 (NEPA) to explore and evaluate in the EIS a reasonable range of alternatives designed to meet the purpose and need of the applicant's proposal. Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190 (D.C. Cir. 1991). At the same time, we are aware that we cannot let the environmental review process indefinitely delay the Board's final decision on this matter.

In the Final Scope, we made a preliminary determination, based on the City of Rochester's engineering study and cost estimates, that the City had met an initial burden of showing that its proposed south bypass may be a feasible routing alternative. Accordingly, we requested comments from the railroad and other concerned parties on whether the south bypass proposal was feasible, or would simply shift the potential environmental consequences of the applicant's proposal to different communities and populations. Having provided this opportunity in Rochester, we believe that we should afford other interested communities the same opportunity to submit specific bypass designs.

Therefore, we will extend the comment period established in the Final Scope for an additional 60 days, or until June 10, 1999, to provide time for any other interested community to submit a bypass proposal. Dakota, Minnesota & Eastern Railroad or any interested party or person

who may be affected by a proposed bypass would then have 30 days, or until July 12, 1999, to respond. In addition, parties may use the additional time to submit comments on other alternatives described in the Final Scope.

We note that the information we receive from any community regarding a bypass must be detailed enough for us to determine whether a specific bypass proposal constitutes a reasonable and feasible alternative to the applicant's proposal or merely relocates the potential environmental consequences of the applicant's proposed action. To that end, any bypass proposal submitted by a community must, at a minimum, contain the following information: detailed maps showing where the route would be located; quantified impacts to wetlands; cut and fill requirements to permit design and operation of a railroad; roads that would be crossed and their average daily traffic levels; proximity of the bypass to sensitive structures (for example, schools, libraries, hospitals, residences, retirement communities, and nursing homes); and impacts to landowners and farmlands.

Also, in considering bypass proposals that may be submitted to the Board and determining whether they constitute reasonable, feasible alternatives, we will take into account the applicant's goal to create a more efficient route by which to transport coal. A circuitous route that bypasses numerous communities could add so many additional miles that it would be unlikely to allow applicant to achieve its goal of providing efficient rail transportation. However, before arriving at a final decision on the range of alternatives to be addressed in the DEIS, we will carefully consider any specific bypass proposal and all responses to such a proposal.

Finally, we must balance our responsibility to analyze a reasonable range of alternatives with the need to move the environmental review process forward without undue delay. To allow us to issue the DEIS in a timely manner, we will not grant further extensions of time.

The requests for additional time to provide comments on potential environmental impacts will be denied. As the Board and its cooperating agencies stated in the Final Scope, we are in the process of preparing a DEIS analyzing all potential environmental effects discovered during the course of the environmental review process, including concerns identified during scoping. The DEIS will be made available upon its completion for public review and comment. Accordingly, there is no need to provide an additional comment period on potential environmental impacts at this point.

Bypass proposals and comments on alternatives described in the Final Scope must be submitted to the Board by June 10, 1999. Replies or responses must be submitted by July 12, 1999. Comments should be sent to:

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

To ensure proper handling of your comments, you must mark your submission:

Attention: Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing

It is ordered:

1. The comment due date set forth in the Final Scope regarding alternatives shall be extended to June 10, 1999. Reply comments are due by July 12, 1999. No further extensions of time shall be granted.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary

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**Amended Notice of Intent to Prepare an Environmental Impact
Statement (EIS); Addition of U.S. Coast Guard and U.S. Department
of Interior Bureau of Reclamation as Cooperating Agencies**

Decision No: 30757

January 12, 2000

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30757
SEA

SERVICE DATE - JANUARY 12, 2000

SURFACE TRANSPORTATION BOARD

Finance Docket No. 33407

Dakota, Minnesota & Eastern Railroad Corporation
Construction into the Powder River Basin

Decided January 12, 2000

Action: Amended Notice of Intent to Prepare an Environmental Impact Statement (EIS); Addition of U.S. Coast Guard and U.S. Department of Interior Bureau of Reclamation as Cooperating Agencies.

Summary: On February 20, 1998, the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) filed an application with the Surface Transportation Board (Board) for authority to construct and operate new rail line facilities in east-central Wyoming, southwest South Dakota, and south-central Minnesota. The project involves approximately 280.9 miles of new rail line construction. Additionally, DM&E proposes to rebuild approximately 597.8 miles of existing rail line along its current system to standards acceptable for operation of unit coal trains. The project would require actions by a number of Federal agencies, including the Board, the U.S. Department of Agriculture Forest Service (USFS), the U.S. Department of Interior Bureau of Land Management (BLM), and the U.S. Army Corps of Engineers (COE), who previously agreed to be cooperating agencies for the EIS.

As part of its plans to rebuild its rail line through Pierre, South Dakota, DM&E proposes to rebuild its existing bridge or construct a new bridge over the Missouri River to permit the operation of unit coal trains. The U.S. Coast Guard (USCG) has responsibility and authority to issue bridge permits under the provisions of Section 9 of the Rivers and Harbors Act of 1899, and under the General Bridge Act of 1946. Therefore, in order for DM&E to rebuild or construct a new bridge over navigable waters, it must apply for a permit from the USCG, which in turn would require an environmental review of DM&E's action pursuant to NEPA.

The U.S.D.I. Bureau of Reclamation (USBR) is the agency responsible for operation and administration of the Angostura Reservoir and associated irrigation canals and ditches. The USBR works closely with the local irrigation district for repayment of project costs based on water delivered and acres of irrigated land. If this project crosses lands, irrigation ditches or canals under the jurisdiction of the USBR, a permit for such crossings will be required from the USBR prior to construction. Depending on the alternative approved for construction, the USBR may be required to issue a permit, which would normally require environmental review. Consequently, USCG and USBR have agreed to be cooperating agencies for the EIS. The purpose of this Amended Notice of Intent is to notify persons and agencies interested in or affected by the proposed project of additional USCG and USBR decisions triggered by the project.

SUPPLEMENTARY INFORMATION

Environmental Review Process: The Board has determined that an Environmental Impact Statement (EIS) must be prepared in accordance with the provisions of the National Environmental Policy Act (NEPA) prior to its decisions on the proposed project. The Board is the lead agency, pursuant to 40 CFR 1501.5(c), supervising the preparation of the EIS. The USFS, BLM, COE, USCG, and USBR are cooperating agencies, pursuant to 40 CFR 1501.6, and shall adopt the EIS and base their respective decisions on it. The NEPA process is intended to assist the Board, its cooperating agencies, and the public in identifying and assessing the potential environmental consequences of a proposed action before a decision on the proposed action is made. The Board's Section of Environmental Analysis (SEA) is responsible for ensuring that the Board complies with the NEPA, 42 U.S.C. 4321-4335, and related environmental statutes. The EIS should include all of the information necessary for decisions by the Board and the cooperating agencies.

SEA and the cooperating agencies are preparing a Draft EIS (DEIS) for the proposed project. The DEIS will address those environmental issues and concerns identified during the scoping process and detailed in the scope of study. It will also contain a reasonable range of alternatives to the proposed action and recommended environmental mitigation measures. The DEIS will be made available upon its completion for public review and comment. A Final EIS (FEIS) will then be prepared reflecting SEA's further analysis and the comments on the DEIS. In reaching each decision in this case, the agencies will take into account the DEIS, the FEIS, and all public and agency comments received.

For Further Information Contact: Victoria Rutson, Project Manager, Surface Transportation Board, Powder River Basin Expansion Project, 1-877-404-3044;
U.S.D.A. Forest Service, Wendy Schmitzer, (307) 358-4690;
U.S.D.I. Bureau of Land Management, Bill Carson, (307) 746-4453;
U.S. Army Corps of Engineers, Jerry Folkers, (402) 221-4173;
U. S. Coast Guard, Roger Wiebusch, (314) 539-3900, ext. 378;
U.S.D.I. Bureau of Reclamation, Dennis Breitzman, (701) 250-4242, ext. 3101.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary

APPENDIX B
Agency Correspondence

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TABLE OF CONTENTS

Agency Contact Letter

List of Agency Contacts

Agency Correspondence

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APPENDIX B AGENCY CORRESPONDENCE

The Section of Environmental Analysis (SEA) of the Surface Transportation Board (the Board) issued a Draft EIS in accordance with the requirements of the National Environmental Policy Act (NEPA), as amended (42 USC 4321); the Board's environmental rules (49 CFR Part 1105); and other applicable environmental statutes and rules.

The Draft EIS addresses the environmental comments the SEA received during its ongoing environmental review, and it reflects SEA's further environmental analysis, including site visits and consultations. In addition, the Draft EIS contains SEA's environmental recommendations to the Board. The Board will consider SEA's recommendations and the environmental record before making a decision in this proceeding.

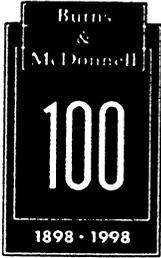
This appendix contains SEA's correspondence to Federal, State and local agencies and 92 letters responding to SEA's request for information on the project area and any issues and concerns of agencies throughout the project area during the scoping period.

Table B-1 (following the sample letter submitted to the agencies and list of agencies contacted) lists the correspondence for the Draft EIS in order of comment date and organizes them as follows:

- Federal Agencies
- State, regional, and local agencies, elected officials, and organizations grouped by state.

The reproduced comment letters are presented in Table B-1.

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June 8, 1998

Mike Wagner
Nicollet County Public Works
Box 518
St. Peter, MN 56082

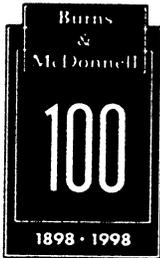
DMERR
Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad
Corporation
Powder River Basin Expansion Project
Request for Human and Natural Resources Information
97-304-4

Dear Mr. Wagner:

Burns & McDonnell is serving as the third party consultant to the Surface Transportation Board (the Board), Section of Environmental Analysis (SEA) for the preparation of an Environmental Impact Statement (EIS). The EIS is necessary as part of the Board's approval required for construction of a proposed new rail project, the Powder River Basin Expansion Project, Finance Docket Number 33407. The purpose of this letter is to request information on the human and natural resources within the project area which could potentially be impacted by this project, as well as any permits and approvals required for project construction.

The proposed project involves construction by the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) of approximately 280 miles of new rail line in Wyoming, South Dakota, and Minnesota to facilitate access to coal mines located in the Powder River Basin of Wyoming. Approximately 600 miles of rail line would be upgraded on the existing DM&E system within South Dakota and Minnesota. The Board does not have jurisdiction over DM&E's plans to upgrade its existing system, however, it will be analyzing the potential environmental impact of the proposed increase in train traffic on DM&E's line.

Approximately 262 miles of new rail line will extend from DM&E's existing main line near Wasta, South Dakota, through Pennington, Custer, and Fall River Counties, South Dakota and Niobrara, Weston, Campbell, and Converse Counties in Wyoming. An additional 13 miles of new rail line will be constructed to serve



Mr. Wagner
June 8, 1998
Page 2

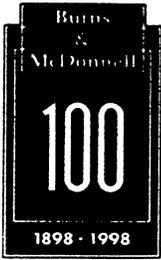
as a bypass around Mankato, Minnesota. The bypass will extend west from DM&E's existing main line on the east end of Mankato through Blue Earth and Nicollet Counties, terminating on the west end of the city. New line will also be constructed south east of Owatonna, Minnesota. The new line will extend south approximately 3 miles through Steele County, Minnesota.

The rebuild of approximately 600 miles of rail line along DM&E's existing system will begin near Wasta, South Dakota and continue eastward for approximately 468 miles, terminating at the bypass on the west end of Mankato, Minnesota. An additional 117 miles of DM&E's existing mainline will be rebuilt from the eastern end of the Mankato bypass eastward, terminating at Winona, Minnesota. A small rebuild, approximately 13 miles in length, will begin north of Oral, South Dakota and continue south through Smithwick, South Dakota along DM&E's existing line.

We have included a list of the various federal, state and local agencies receiving this letter. If there are others you feel we should contact, please let me know. We have also enclosed copies of U.S.G.S. 7.5 minute quadrangle maps showing the location of the proposed construction and the alternate routes in your potential area of interest. Please contact me if additional map coverage is required. In addition, DM&E has prepared a Geographic Information Systems database in ARC/INFO that contains the preferred and alternative route network on a 7.5 minute map base. The database contains a variety of layers, including roads and waterways, and can be used with compatible ARC/INFO systems. The database is on CD ROM and can be obtained by contacting Beth Lynn of DM&E at (605) 697-2400.

At this time, as a follow-up to scoping meetings, I would like to request any information you could provide relating to the following issues:

- land use and development
- energy use
- water resources/quality
- fish and wildlife
- noise
- historic, archaeological, paleontological resources
- aesthetics/scenic areas
- hazardous materials
- vegetation
- existing transportation systems
- air quality/emissions
- wetlands
- threatened and endangered species
- public health and safety
- public lands
- economic resources
- recreation
- unique or sensitive natural communities



Mr. Wagner
June 8, 1998
Page 3

Information on any additional issues you feel are appropriate would also be appreciated. We would also request your response by June 26, 1998 in order to schedule any site visits or surveys, conduct any necessary follow-up activities, and incorporate your response into the scope of study as appropriate.

Thank you for your assistance with this project. We look forward to working with you throughout preparation of the EIS. Should you have any questions or require additional information, please contact me at (816) 822-3851, Carol Cunningham (Burns & McDonnell) (816) 333-9400 or Victoria Rutson, STB project manager at (202) 565-1545.

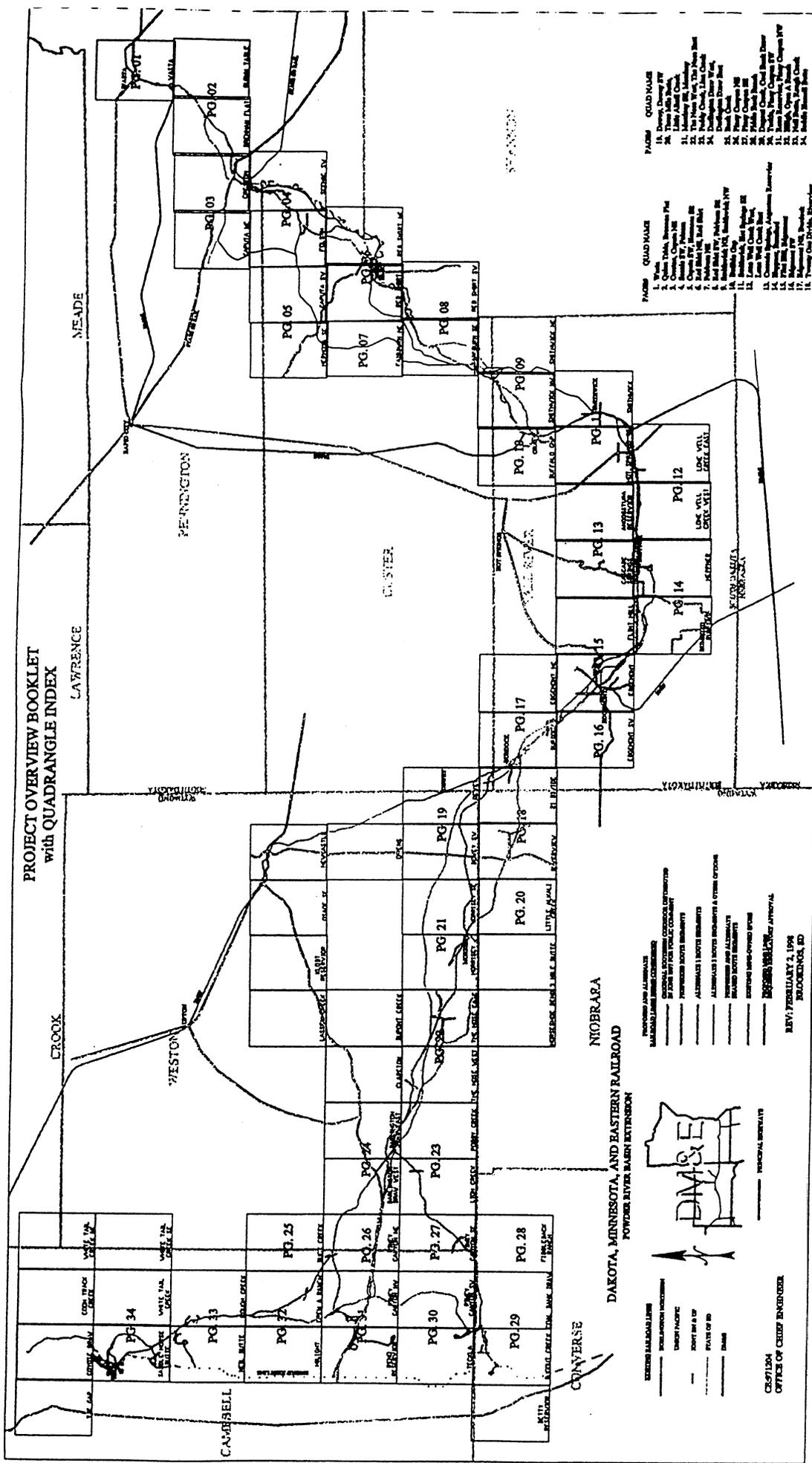
Sincerely,

A handwritten signature in cursive script that reads "Stephen G. Thornhill".

Stephen G. Thornhill
Project Manager

enclosures

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**PROJECT OVERVIEW BOOKLET
with QUADRANGLE INDEX**

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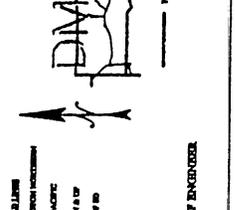
QUAD NAME	QUAD NAME
1. Wagon Train	11. Wagon Train
2. Queen of the Valley	12. Queen of the Valley
3. Queen of the Valley	13. Queen of the Valley
4. Queen of the Valley	14. Queen of the Valley
5. Queen of the Valley	15. Queen of the Valley
6. Queen of the Valley	16. Queen of the Valley
7. Queen of the Valley	17. Queen of the Valley
8. Queen of the Valley	18. Queen of the Valley
9. Queen of the Valley	19. Queen of the Valley
10. Queen of the Valley	20. Queen of the Valley
21. Queen of the Valley	31. Queen of the Valley
22. Queen of the Valley	32. Queen of the Valley
23. Queen of the Valley	33. Queen of the Valley
24. Queen of the Valley	34. Queen of the Valley

- LEGEND**
- FEDERAL BOUNDARY
 - STATE BOUNDARY
 - COUNTY BOUNDARY
 - TOWNSHIP BOUNDARY
 - SECTION BOUNDARY
 - QUADRANGLE BOUNDARY
 - RAILROAD
 - HIGHWAY
 - RIVER
 - CREEK
 - LAKE
 - SWAMP
 - SANDHILL
 - BUTTE
 - HILL
 - MOUNTAIN
 - PLATEAU
 - VALLEY
 - CANYON
 - PASS
 - STRAIT
 - NECK
 - POINT
 - HEADLAND
 - SPIT
 - PENINSULA
 - Isthmus
 - Trench
 - Gorge
 - Ravine
 - Gully
 - Draw
 - Run
 - Stream
 - Brook
 - Creek
 - River
 - Bay
 - Sound
 - Strait
 - Gulf
 - Ocean
 - Sea
 - Lake
 - Pond
 - Reservoir
 - Dam
 - Embankment
 - Trench
 - Causeway
 - Bridge
 - Tunnel
 - Viaduct
 - Overpass
 - Underpass
 - Culvert
 - Box Culvert
 - Arch Culvert
 - Pipe Culvert
 - Trestle
 - Trestle Bridge
 - Trestle Viaduct
 - Trestle Embankment
 - Trestle Trench
 - Trestle Causeway
 - Trestle Dam
 - Trestle Reservoir
 - Trestle Embankment
 - Trestle Trench
 - Trestle Causeway
 - Trestle Dam
 - Trestle Reservoir

**DAKOTA, MINNESOTA, AND EASTERN RAILROAD
POWDER RIVER BASIN EXTENSION**

NIORARA

REVISED FEBRUARY 2, 1994
BROOKINGS, SD

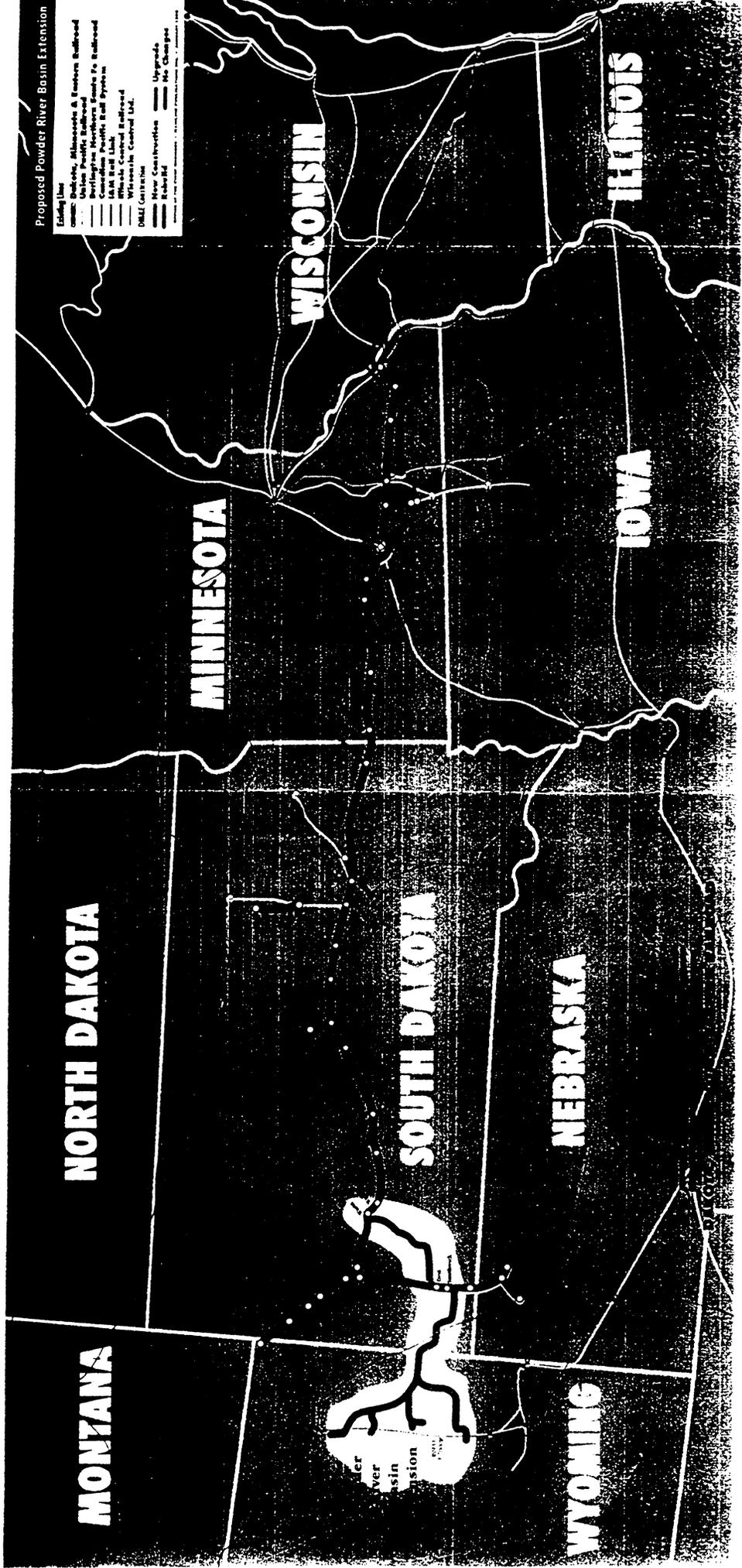


CONVERSE

OFFICE OF CHIEF ENGINEER

Proposed Powder River Basin Extension

- Existing Lines
- Chicago, Duluth, Minneapolis & Eastern Railroad
 - Union Pacific Railroad
 - Burlington Northern Santa Fe Railroad
 - Great Northern Railroad
 - Rocky Mountain Railroad
 - Wisconsin Central Railroad
 - DILL (Central)
- DILL Construction
- New Construction
 - Upgrade
 - Rebuild
 - No Change



NORTH DAKOTA

MINNESOTA

WISCONSIN

IOWA

ILLINOIS

MONTANA

SOUTH DAKOTA

NEBRASKA

WYOMING

Minnesota Agencies Contacted

[THIS PAGE INTENTIONALLY LEFT BLANK]

Blue Earth County Commissioners
P.O. Box 347
Mankato, MN 56002-0347
Alvis Moore

Board of Water & Soil
261 Highway 15 South
New Ulm, MN 56073
Chris Hughes

Bureau of Indian Affairs
Environmental Services
331 S. 2nd Avenue
Minneapolis, MN 55401
Herb Nelson

EPA Region 5
77 W. Jackson Blvd.
Mail Code WC-15J
Chicago, IL 60604-3590
Mike MacMullin

Geological Survey
University of Minnesota
2642 University Ave.
St. Paul, MN 55114
Dale Setterholm
Assistant Director

Le Sueur County Commissioners
88 South Park
Le Center, MN 56057
Robert Culhane

Minnesota Department of Natural
Resources
County Biological Survey
Box 25
500 Lafayette Road
St. Paul, MN 55155-40
Steven Merchant

Railroad Prairie Survey Coordinator
Minnesota Historical Society
345 Kellogg Blvd. West
St. Paul, MN 55102-1906
Nina Archabal
State Historical Preservation Officer

Minnesota Department of Transportation
161 St. Anthony Mail Stop 470
St. Paul, MN 55103
Al Vogel
TRIM Program

Minnesota Department of Transportation
3485 Hadley Avenue, N. Mail Stop 620
Oakdale, MN 55128
Jerry Larson

Minnesota Department of Transportation
501 S. Victory
Mankato, MN 56001
Jim Swanson
District Engineer

Minnesota Department of Transportation
2900 48th Street NW
Rochester, MN 55901
Kermit McRae
District Engineer

Minnesota Environmental Quality Board
3rd Floor, Centennial Bldg.
658 Cedar St.
St. Paul, MN 55155
Mike Sullivan

Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, MN 55155
Paul Hoff
Director Environmental Planning and
Review (EPRO)

Nicollet County Commissioners
501 S. Minnesota Avenue
St. Peter, MN 56082
Clifford Wenner

NRCS-USDA
375 Jackson St. Ste. 600
St. Paul, MN 55101
William Hunt
State Conservationist

Office of Management and Budget
Services
Department of Natural Resources
Environmental Review
500 Lafayette Road
St. Paul, MN 55155
Ken Wald

Steele County Commissioners
630 Florence Avenue
Owatonna, MN 55060
L. Dean Christianson

U.S. Army Corps of Engineers
St. Paul District
Army Corps of Engineers Center
190 5th Street
St. Paul, MN 55101-1638
Paul Richert

US Army Corps of Engineers
St. Paul District
Rm. 219, P.O. Box 1445
US Post Office Bldg.
La Crosse, WI 54601
Jan O'Malley
Environmental Protection Specialist

U.S. Fish and Wildlife Service
Region 3
Great Lakes-Big Rivers Regional Office
1 Federal Dr., Federal Bldg.
Fort Snelling, MN 55111
William Hartwig
Assistant Regional Director

**South Dakota
Agencies Contacted**

[THIS PAGE INTENTIONALLY LEFT BLANK]

Bureau of Indian Affairs
115 4th Avenue SE
Aberdeen, SD 57401
Roy Pulfrey

Custer County Commissioners
420 Mt. Rushmore
Custer, SD 57730
Joe McFarland
Chairman County Board

Department of Agriculture
Foss Building
523 E. Capitol Avenue
Pierre, SD 57501
Darrell Cruea
Secretary

Department of Agriculture
Natural Resource Conservation Service
523 E. Capitol Avenue
Pierre, SD 57501
Ray Sowers
Director Division Resource Conservation
Service

Department of Agriculture
Forest Service
Fall River Ranger District
Hot Springs, SD 57747
Mike Erk

Department of Agriculture
Forest Service
Ft. Pierre National Grasslands
P.O. Box 417
Pierre, SD 57501
Tony DeToy

EPA Region 8
999 18th St., Ste. 500
Denver, CO 80202-2466
Cindy Cody

Fall River County Commissioners
906 N. River Street
Hot Springs, SD 57747
Franklin Manke
Chairman County Board

NRCS-USDA
Federal Bldg. 3124
100 E. B Street
Casper, WY 82601-1911
Ed Burton
State Conservationist

Pennington County Commissioners
315 St. Joseph
Rapid City, SD 57701
Orland Paulson
Chairman County Board

South Dakota Department of Game, Fish
and Parks
Foss Building
523 Capitol Avenue
Pierre, SD 57501
John Cooper
Secretary

South Dakota Department of Environment
and Natural Resources
Foss Building
523 Capitol Avenue
Pierre, SD 57501
Kim McIntosh

South Dakota Department of Revenue
Knelp Building
700 Governors Drive
Pierre, SD 57501
Jim Schade

South Dakota Department of Transportation
Becker/hanson Building
700 East Broadway Avenue
Pierre, SD 57501
Roxanne Rice

South Dakota Schools and Public Lands
Commission
500 E. Capitol Avenue
Pierre, SD 57501
Curtis Johnson
Commissioner

State Historical Preservation Center
Cultural Heritage Center
900 Governors Drive
Pierre, SD 57501
Jay Vogt

U.S. Army Corps of Engineers
Regulatory Branch
28563 Powerhouse Road
Room 120
Pierre, SD 57501
Steve Naylor
State Program Manager

U.S. Fish and Wildlife Service
420 S. Garfield Ave., Ste. 400
Pierre, SD 57501-5408
Dave Allardyce

**Wyoming
Agencies Contacted**

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Bureau of Indian Affairs
Billings Area Office
316 N. 26th Street
Billings, MT 59101
Rick Stefanic

Bureau of Land Management
Wyoming State Office
5353 Yellowstone Road
Cheyenne, WY 82003
Tamara Gertsch

Bureau of Land Management
Newcastle Resource Area
1101 Washington Blvd.
Newcastle, WY 82701
Gary Johnson

Bureau of Land Management
Casper Field Office
1701 East E Street
Casper, WY 82601
Patrick Moore

Campbell County Commissioners
500 S. Gillette Ste. 212
Gillette, WY 82716
Les Desavedo
Chairman County Board

Converse County Commissioners
Drawer 990
Douglas, WY 82633
Leon Chamberlain
Chairman County Board

Department of Agriculture
2219 Carey Ave.
Cheyenne, WY 82002
Don Christianson

EPA Region 8
999 18th St., Ste. 500
Denver, CO 80202-2466
Cindy Cody

Federal Highway Administration
1916 Evans Avenue
Cheyenne, WY 82001
Mike Bowan

Geological Survey
2617 Lincolnway, Ste. B
Cheyenne, WY 82002
Kathy Muller Ogle

Governor's Office
Capitol Building
Cheyenne, WY 82002
Margaret Spearman

Natural Resources Conservation Service
100 East B Street Rm. 3124
Casper, WY 82601
Clifford Byrd

Niobrara County Commissioners
402 South Elm
Lusk, WY 82225
Donna Ruffing
Chairman County Board

NRCS-USDA
Federal Bldg. 3124
100 E. B Street
Casper, WY 82601-1911
Ed Burton
State Conservationist

Office of State Lands & Investments
Herschler Bldg., 3 West
122 West 25th Street
Cheyenne, WY 82002
Steve Reynolds
Director

Oil & Gas Commission
P.O. Box 2640
Casper, WY 82602
Don Likwartz

State of Wyoming
Herschler Bldg. 3W
Cheyenne, WY 82002-0600

State Clearinghouse
Herschler Bldg.
3rd Floor West
Cheyenne, WY 82002
Jane Hamilton

State Forestry Division
1100 W. 22nd St.
Cheyenne, WY 82002
Howard Pickerd
Forest Manager Forester

U. S. Forest Service
2468 Jackson
Larimie, WY 82070
Melissa Martin
NEPA Specialist

U. S. Army Corps of Engineers
Omaha District
215 North 17th Street
Omaha, NE 68102-4978
Russ Rocheford
Chief of District Field Support

U. S. Army Corps of Engineers
Cheyenne Regulatory Office
2232 Del Range Blvd., Ste. 210
Cheyenne, WY 82009-4942
Chandler Peter

U. S. Army Engineer District
Omaha PD-M
215 North 17th Street
Omaha, NE 68102-4978
Candy Thomas
Chief Environmental Analysis Branch

U. S. Fish and Wildlife Service
4000 Morrie Ave.
Cheyenne, WY 82001
Pete Ramirez
Fish and Wildlife Biologist

U. S. Senator Enzi
510 South Gillette
Gillette, WY 82716
Robin Bailey

U. S. Forest Service
Thunder Basin National Grassland
Douglas, WY 82633
Joe Reddick

U. S. Representative Barbara Cubin
2015 Federal Building
Cheyenne, WY 82001
Elaine McCauley

U. S. Forest Service
Douglas Ranger District
2250 E. Richards
Douglas, WY 82633
Tim Byer

U. S. Forest Service
Nebraska National Forest
Buffalo Gap National Grassland
926 N. River
Hot Springs, SD 57747
Clint Kyhl

Weston County Commissioners
1 West Main
Newcastle, WY 82701
Ted Elliott
Chairman County Board

Wyoming Water Development Commission
Herschler Bldg., 4 West
Cheyenne, WY 82002
Mike Bessor

Wyoming State Engineer's Office
Herschler Bldg., 4E
Cheyenne, WY 82002-0600
David Benner

Wyoming State Geological Survey
Box 3008
Laramie, WY 82071
Gary Glass

Wyoming State Historic Preservation Office
2301 Central Ave. 4th Floor
Cheyenne, WY 82002
John Keck
Wyoming State Historic Preservation
Officer

Wyoming State Parks and Historic Sites
Herschler Bldg., 1st Floor East
Cheyenne, WY 82002
Gary Thorson

Wyoming Department of Transportation
5300 Bishop Blvd.
Cheyenne, WY 82003-1708
Dave Bryden

Wyoming Department of Commerce
Barrett Building
2301 Central Ave.
Cheyenne, WY 82002
Melinda Brazzale
Public Information Officer

Wyoming Natural Diversity Database
1604 Grand Ave., Ste. 2
Laramie, WY 82070
Mary Neighbors
Information Manager

Wyoming Game & Fish
5400 Bishop Blvd.
Cheyenne, WY 82006
Tom Collins
Habitat Protection Program Coordinator

Wyoming Division of Tourism
I-25 & College Drive
Cheyenne, WY 82002
Bill Jentle

Wyoming Game and Fish Department
Casper Office
3030 Energy Lane, Ste. 100
Casper, WY 82604
Daryl Lutz

Wyoming Game and Fish Department
Sheridan Office
700 Valley View Drive
Sheridan, WY 82801
Lynn Jahnke

Wyoming Attorney General's Office
123 Capitol Bldg.
Cheyenne, WY 82002
Cyndi Harnett

Wyoming Department of Revenue
Herschler Bldg 2nd West
122 W. 25th Street
Cheyenne, WY 82002
Johnnie Burton

Wyoming Department of Environmental
Quality
Herschler Bldg.
122 W. 25th St., 4th Floor
Cheyenne, WY 82002
Dennis Hemmer
Director

Wyoming Farm Bureau
P.O. Box 1398
Laramie, WY 82073
Ken Hamilton

**TABLE B-1
AGENCY CORRESPONDENCE RECEIVED ON THE DRAFT EIS**

Federal Agencies		
Comment Date	Commentor, subject of Document	Letter No.¹
05/18/1998	Department of the Army, Request for information on human and natural resources within the project area.	B1
06/02/1998	United States Department of Agriculture-Natural Resource Conservation Service, Project sponsors not USDA program benefit recipients.	B2
06/12/1998	United States Department of the Interior, Fish and Wildlife Service Request for information on human and natural resources within the project.	B3
06/17/1998	Office of Federal Land Policy, Request for information for follow-up to scoping meetings.	B4
06/18/1998	United States Environmental Protection Agency, Scoping Comments for the PRB Expansion Project, Draft EIS.	B5
06/24/1998	Depart of the Army, Impacts to Corps of Engineers Flood Control Projects in Minnesota.	B6
07/13/1998	United States Department of Agriculture, Forest Service, Scoping responses addressing issues relative to the proposed DM&E proposal.	B7
07/17/1998	United States Department of the Interior, National Park Service, Review of the draft scope of study for the EIS.	B8
07/27/1998	United States House of Representatives, David Minge, Additional comments regarding expansion of DM&E railroad.	B9
11/05/1998	United States House of Representatives, Roy Blunt, Support of DM&E application.	B10
11/23/1998	United States Senate, Christopher S. Bond, Support of DM&E application.	B11
12/1/1998	United States House of Representatives, Pat Danner, Support of DM&E application.	B12

Federal Agencies		
Comment Date	Commentor, subject of Document	Letter No. ¹
03/17/1999	Department of the Army, Corps of Engineers, Final Scope of the DM&E Railroad/ PRB proposal EIS.	B13
04/07/1999	Office of Federal Land Policy, Comments of Final Scope from the DEQ.	B14
04/09/1999	United States House of Representatives, Gil Gutknecht, Invitation to visit project area in Rochester, MN.	B15
04/09/1999	United States Senate, Paul D. Wellstone, Concerns of environmental effects of the City of Rochester.	B16
05/10/1999	United States House of Representatives, Bill Luther, Concerns about environmental effects of the Rochester Bypass and proposed expansion.	B17
04/15/1999	Congress of the United States, Committee on Transportation and Infrastructure, James L. Oberstar, Support of DM&E expansion and Rochester, MN Bypass.	B18
05/28/1999	Congress of the United States, Tom Daschle, Tim Johnson, John Thune, Schedule of comment period and timely completion of EIS.	B19
02/02/1999	United States Department of Agriculture, Forest Service, Preparation of Chapter 4 for the Draft Environmental Impact Statement.	B20
State Agencies - Minnesota		
11/21/1997	Economic Development Association of Minnesota, Positive impacts of improvements to existing rail line.	B21
05/29/1998	Minnesota Planning Environmental Quality Board, EQB Environmental Review Program rules and guidance document.	B22
06/23/1998	University of Minnesota, Geologic and hydrologic conditions in the project area.	B23
06/23/1998	Minnesota Historical Society, Historic and archaeological properties in Blue Earth County.	B24
06/24/1998	Minnesota Board of Water & Soil Resources, Mankato and Owatonna Alternatives.	B25

Federal Agencies		
Comment Date	Commentor, subject of Document	Letter No. ¹
07/09/1998	State of Minnesota Senate, Steven Morse, Comments on the Draft Scope of Study of the EIS for the DM&E application and consideration of No-Action Alternative.	B26
07/09/1998	Minnesota House of Representatives, Ruth Johnson, Environmental and Public Safety Concerns from the proposed PRB Expansion Project.	B27
07/10/1998	Minnesota Department of Natural Resources, Issues of concern regarding Draft Scope of Study for DM&E EIS.	B28
10/29/1998	State of Minnesota, Office of the Attorney General, Concerns regarding DM&E application for PRB Expansion Project.	B29
04/08/1999	Minnesota House of Representatives, William Kuisle, Opposition to the further study of an alternative route submitted by the City of Rochester.	B30
State Agencies - South Dakota		
06/26/1998	South Dakota Department of Transportation, Request for Project Area Information.	B31
07/13/1998	State of South Dakota, William J. Janklow, Govenor, Response from State of South Dakota regarding the Draft Scope of Study for the EIS.	B32
07/13/1998	Attorney General of the State of South Dakota, Mark Barnett, Comments on the Draft Scope of Study for the EIS.	B33
07/27/1998	South Dakota State Senator Bernie Hunhoff, Extension for public comments and requests for public hearings, concerns over issues addressed.	B34
08/28/1998	State of South Dakota, William J. Janklow, Govenor, Final Comments on the pending application submitted by DM&E.	B35
12/22/1998	State of South Dakota, William J. Janklow, Govenor, Request to the Office of Railroads.	B36
04/08/1999	State of South Dakota, William J. Janklow, Govenor, Endorsment of DM&E application, areas of concern.	B37

Federal Agencies		
Comment Date	Commentor, subject of Document	Letter No.¹
04/10/1999	State of South Dakota Senator Arnold M. "Arne" Brown, Support of DM&E construction as long as Brookings and Pierre, SD are bypassed.	B38
State Agencies - Wyoming		
07/09/1998	State of Wyoming, Office of the Governor, Jim Geringer, Comments addressing new construction proposed into the PRB in Wyoming.	B39
State Agencies - Other		
11/02/1998	Iowa, Office of the Governor, Terry E. Branstad, Governor, Support of the DM&E application.	B40
11/25/1998	Missouri, Office of the Governor, Mel Carnahan, Governor, Support of the DM&E application.	B41
04/08/1999	State of Nebraska, Department of Environmental Quality, Joe Francis, Assumed Impacts to Nebraska.	B42
County And Local - Minnesota		
05/14/1998	Rochester Public Schools, Proposal for STB to mandate a bypass around Rochester and nearby cities as condition of approval of DM&E Expansion Project.	B43
06/10/1998	Olmsted County Attorney, Raymond Schmitz, Comments on the Transportation aspects of the application.	B44
06/11/1998	Nicollet County Board of County Commissioners, Environmental Issues dealing with DM&E's proposed Powder River Basin Expansion Project.	B45
06/12/1998	Nicollet County Public Works Department, Comment period for Mankato Bypass through Nicollet County.	B46
06/24/1998	Nicollet County Public Works Department, DM&E's Nicollet County (Last Choice) Mankato Area Alternative Powder River Basin Expansion Project.	B47
07/01/1998	Mankato Township, Opposition to the proposed route for DM&E through Mankato.	B48

Federal Agencies		
Comment Date	Commentor, subject of Document	Letter No.¹
07/02/1998	County of Olmsted Public Works Department, Air Quality in Olmsted County.	B49
07/02/1998	County of Olmsted Community Services, Emergency Access to medical care.	B50
07/02/1998	Rochester, Minnesota Convention and Visitors Bureau, Negative impact of DM&E on Rochester's hospitality industry.	B51
07/02/1998	City of Eyota, Parks located near railroad tracks.	B52
07/09/1998	Winona County Highway Department, New construction in Winona County and severe vehicle congestion in Winona and its neighboring cities.	B53
07/09/1998	City of St. Charles, Consideration of Impacts to all people and communities.	B54
07/09/1998	County of Olmsted Attorney, Raymond F. Schmitz, Comments on the Scope of the EIS.	B55
07/09/1998	City of Mankato, Planning Commission, Leigh Pomeroy, Consideration of adverse effects of trains on communities and their citizens.	B56
07/29/1998	Winona, Minnesota City Hall, City Participation and Environmental Issues.	B57
08/14/1998	Nicollet County Environmental Services, Resolution objecting to proposed routing of the DM&E Railroad.	B58
08/21/1998	Rochester Area Economic Development, No direct economic benefit to this proposal as well as environmental, safety, and financial issues.	B59
09/28/1998	Mankato Area Chamber and Convention Bureau, Concern about DM&E project and safety and noise issues.	B60
09/28/1998	Brown County Highway Department, Levels of safety at grade crossings in Brown County.	B61
11/03/1998	City of Rochester, MN, Mayor Chuck Canfield, Opposition to DM&E proposal.	B62

Federal Agencies		
Comment Date	Commentor, subject of Document	Letter No.¹
01/04/1999	County of Olmsted, County Administration, Consideration of bypasses.	B63
02/08/1999	Salem Town Board of Olmsted County Minnesota, Opposed to the DM&E bypass.	B64
03/25/1999	Rochester Public Schools, Independent School District #535, Increase of rail traffic in Rochester, MN.	B65
03/29/1999	Rochester Public Schools, Independent School District #535, Support of Bypass on behalf of Mayo Clinic.	B66
04/01/1999	Rochester Public Schools, Independent School District #535, Safety issues and the transportation of hazardous materials.	B67
04/06/1999	Rochester, Minnesota Convention and Visitors Bureau, Negative impacts of DM&E proposal on Rochester's hospitality industry.	B68
04/06/1999	Park and Recreation Department, City of Rochester, Community attributes and support for consideration of a bypass.	B69
04/08/1999	Rochester Area Chamber of Commerce, Final Scope of Study for the EIS.	B70
04/15/1999	The City of Owatonna, Support for I&M Connection.	B71
08/24/1999	City of Mankato, Comments on the potential impacts and required mitigation measures respecting the DM&E project to construct access to the PRB and upgrade its existing rail line through the City of Mankato.	B72
03/13/2000	The City of Owatonna, MN, Withdrawal of Proposal to further the study of a by-pass around Owatonna.	B73
County and Local - South Dakota		
01/14/1998	Custer County Board of Commissioners, DM&E Railroad/New Rail Corridors, opposition to use of eminent domain.	B74
06/18/1998	City of Huron, Mary A. Pearson, Mayor, Proposed Expansion by the DM&E Railroad, Issue categories to be addressed.	B75

Federal Agencies		
Comment Date	Commentor, subject of Document	Letter No.¹
06/24/1998	Fall River & Shannon Counties, County Commissioners, Response to request for impact information concerning the expansion and construction of the DM&E Railroad.	B76
06/29/1998	City of Brookings, SD, Public Safety Commissioner, Public Safety related to the Proposed Expansion Project of the DM&E Railroad.	B77
07/29/1998	Huron Housing and Redevelopment Authority, Support for the DM&E project.	B78
08/27/1998	Huron Area Chamber of Commerce, Support of the DM&E expansion project.	B79
08/28/1998	City of Philip, Rebuttal of Public Comment.	B80
11/23/1998	City of Wessington, Support of DM&E's upcoming rail expansion.	B81
04/06/1999	Pennington County Highway Department, Impact on guaranteed access for landowners.	B82
06/07/1999	Mayor's Bypass Committee, Brookings, Supporting documents for the Brookings Bypass.	B83
06/14/1999	Sioux Valley School District No. 5-5, Impact of proposed bypass on Sioux Valley School District.	B84
07/01/1999	Brookings Township Board of Supervisors, Upgrade of Route through the City of Brookings.	B85
07/05/1999	City of Bruce, Opposition to Brookings Bypass.	B86
07/06/1999	Brookings County Commissioners, Need for continued rail transportation and comments on issues of concern.	B87
07/08/1999	Brookings County Sheriff's Office, Public safety concerns.	B88
County and Local - Wyoming		
02/21/1998	Niobrara County Commissioners, Donna I. Ruffing, Request to be named to the scoping board.	B89

Federal Agencies		
Comment Date	Commentor, subject of Document	Letter No.¹
03/17/1998	Niobrara County Commissioners, Opposition to DM&E construction in Niobrara County.	B90
06/03/1998	City of Newcastle, WY, Comments on disruption and safety in regards to the Proposed Powder River Basin Expansion Project.	B91
07/03/1998	Niobrara County Commissioners, Comments on Draft Scope of Study.	B92

Page numbering of letters is located on the first page of each letter in the upper right hand corner.



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
216 NORTH 17TH STREET
OMAHA, NEBRASKA 68102-4678
May 18, 1998

REPLY TO
ATTENTION OF

Planning Division

Mr. Stephen G. Thornhill
Project Manager
Burns & McDonnell
9400 Ward Parkway
Kansas City, Missouri 64114

Dear Mr. Thornhill:

We have received your correspondence of May 11, 1998 requesting information on the human and natural resources within the project area which could potentially be impacted by the proposed rail project (Powder River Expansion). You referenced a list of various Federal, State, and local agencies that were receiving this letter also. It was not enclosed with the correspondence that you sent us. If we are repetitive in directing you to these agencies, that is the reason why.

If you have not already done so, we recommend that you consult with the U.S. Fish and Wildlife Service and the state agency in both South Dakota and Wyoming responsible for fish and wildlife resources. In addition, the State Historic Preservation Office should be contacted for information and recommendations on potential cultural resources in the project areas of each state.

If construction takes place in waterways or wetlands which are classified as waters of the United States and involves the temporary or permanent placement of dredged or fill material into these waters, it is regulated under Section 404 of the Clean Water Act. A Section 404 permit may be required, and it will be necessary to contact the Corps of Engineers Regulatory Office in the respective state. Final project plans should be sent to:

Mr. Matthew Bilodeau
Regulatory Office
2232 Dell Range Blvd., Suite 210
Cheyenne, Wyoming 82009-4942

Mr. Steve Naylor
Regulatory Office
28563 Powerhouse Road, Room 120
Pierre, South Dakota 57501



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If you have any questions, please contact Ms. Patsy Freeman of our staff at (402) 221-3803.

Sincerely,

Robert S. Nebel
Chief, Environmental Analysis Branch



United States
Department of
Agriculture

Natural
Resources
Conservation
Service

375 Jackson Street, Suite 600
St. Paul, MN 55101-1854

B2

June 2, 1998

IN REPLY

REFER TO: Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation Powder Basin Expansion Project

Victoria Rutson
Case Control Unit
Surface Transportation Board
1325 K Street NW
Washington, D.C. 20423-0001

Dear Ms. Rutson:

Natural Resources Conservation Service (NRCS) has reviewed the appropriate sections (wetlands and threatened and endangered species) for the above mentioned proposed project. The project sponsors are not USDA program benefit recipients, thus, the wetland conservation provisions of the 1985 Food Security Act, as amended are not applicable. It should be noted, however, that actions by a non-USDA participant third party (project sponsor) which impact wetlands owned or operated by USDA participants, may jeopardize the owner/operators USDA eligibility. If such impacts are anticipated, the owner/operator should contact the county Farm Service Agency (FSA) office to consider an applicant for a third party exemption.

Neither NRCS technical nor financial assistance is being provided in support of this project, thus, specific NRCS environmental policies are not applicable.

The following agencies may have federal or state wetlands, cultural resources, water quality or threatened and endangered species jurisdiction in the proposed project, and should be consulted.

Army Corps of Engineers
US Fish and Wildlife Service
Board of Water and Soil Resources
Minnesota Department of Natural Resources
Minnesota Pollution Control Agency
State Historic Preservation Officer/State Archaeologist

As additional review with regard to work being proposed in Minnesota, NRCS has the following comments regarding prime farmland soils: it appears that much of the work will be in existing right of ways along previous railroad beds but several new lines and some alternatives are included. Wherever new lines are involved and existing farmland is proposed to be taken out of production a form AD-1006 will need to be filled out.

Attached are two Farmland Conversion Impact Rating forms (AD-1006), one for the Mankato area and one for the Owatonna area, where it appears new lines are being proposed. Parts I and III need to be filled out for all alternatives that would take existing farmland out of agricultural production. The forms can then be sent back to NRCS for processing.

If through these impacts you are purchasing new or acquiring additional lands and if any federal monies are involved, it is a requirement that a Farmland Policy Protection Act (FPPA) site assessment be appropriately filled. These site assessments are conducted by NRCS personnel to review the project for possible effects on unique, prime or statewide important farmland. Contact your local NRCS office for more information.

WILLIAM HUNT
State Conservationist

The Natural Resources Conservation Service,
formerly the Soil Conservation Service,
is an agency of the
United States Department of Agriculture

AN EQUAL OPPORTUNITY EMPLOYER

FARMLAND CONVERSION IMPACT RATING

PART I (To be completed by Federal Agency)

Date of Land Evaluation Request: _____

Name of Project: _____ Federal Agency Involved: _____

Proposed Land Use: _____ County And State: _____

ART II (To be completed by SCS)

Does the site contain prime (unique, statewide or local important farmland) or unique farmland? Yes No

Does the site contain unique farmland? Yes No

Amount of farmland as defined in FPPA: _____ Acres

Amount of farmland as defined in FPPA: _____ Acres

Name of Land Evaluation System Used: _____ Name of Local Site Assessment System: _____ Date Land Evaluation Returned by SCS: _____

ART III (To be completed by Federal Agency)

	Alternative Site Rating			
	Site A	Site B	Site C	Site D
A. Total Acres To Be Converted Directly				
B. Total Acres To Be Converted Indirectly				
C. Total Acres In Site				

ART IV (To be completed by SCS) - Land Evaluation Information

A. Total Acres Prime And Unique Farmland: _____

B. Total Acres Statewide And Local Important Farmland: _____

C. Percentage Of Farmland In County Or Local Govt. Unit To Be Converted: _____

D. Percentage Of Farmland In Govt. Jurisdiction With Same Or Higher Relative Value: _____

ART V (To be completed by SCS) - Land Evaluation Criterion

Relative Value Of Farmland To Be Converted (Scale of 0 to 100 Points)

Site Assessment Criteria (These criteria are explained in 7 CFR 658.51b)	Maximum Points
1. Area In Nonurban Use	
2. Perimeter In Nonurban Use	
3. Percent Of Site Being Farmed	
4. Protection Provided By State And Local Government	
5. Distance From Urban Builtup Area	
6. Distance To Urban Support Services	
7. Size Of Present Farm Unit Compared To Average	
8. Creation Of Nonfarmable Farmland	
9. Availability Of Farm Support Services	
10. On-Farm Investments	
11. Effects Of Conversion On Farm Support Services	
12. Compatibility With Existing Agricultural Use	
TOTAL SITE ASSESSMENT POINTS	160

ART VII (To be completed by Federal Agency)

Relative Value Of Farmland (From Part V)	100
Total Site Assessment (From Part VI) above or a local site assessment	160
TOTAL POINTS (Total of above 2 lines)	260

Site Selected: _____ Date of Selection: _____ Was A Local Site Assessment Used? Yes No

Reason For Selection: _____



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
4000 Morrill Avenue
Cheyenne, Wyoming 82001

ES-61411
MEJ/W.24/1757/dmc.scp

June 12, 1998

Mr. Stephen G. Thornhill
Burns and McDonnell
9400 Ward parkway
Kansas City, Missouri 64114-3319

Dear Mr. Thornhill:

Thank you for your May 11 letter requesting information on the human and natural resources within the project area for the Dakota, Minnesota, and Eastern Railroad's Powder River Basin Expansion Project in South Dakota and Wyoming. In response to the Surface Transportation Board's March 27 notice of intent to prepare an Environmental Impact Statement for this project, the U.S. Fish and Wildlife Service (Service) provided comments for inclusion in general comments provided by the Department of the Interior. These comments included issues and concerns from the Service offices in Wyoming and South Dakota. I am enclosing a copy of pertinent parts of those comments for your use. Additionally, I am including more specific information regarding the items of concern to the Service's Wyoming office. For more specific information regarding concerns in South Dakota, you should contact the Service's office in Pierre at 420 South Garfield Ave., Suite 400, Pierre, SD 57501-5408 or phone (605) 224-8693.

Threatened, Endangered, and Proposed Species

In accordance with section 7(c) of the Endangered Species Act of 1973, as amended (Act), my staff has determined that the following threatened or endangered species may be present in the project area.

Species	Status	Expected Occurrence
Black-footed ferret (<i>Mustela nigripes</i>)	Endangered	Potential resident in prairie dog (<i>Cynomys</i> sp.) colonies.
Bald eagle (<i>Haliaeetus leucocephalus</i>)	Threatened	Potential nesting. Winter resident.
Peregrine falcon (<i>Falco peregrinus</i>)	Endangered	Migrant.

Mr. Stephen G. Thornhill

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with this office early in the planning and assessment process to discuss the possibility of an alternate route or methods to mitigate impacts to the reintroduction site if no alternate route is feasible.

Candidate Species

Species that are candidates for listing as threatened or endangered that may occur within the project area are identified below. Many Federal agencies have policies to protect candidate species from further population declines. I would appreciate receiving any information available on the status of these species in or near the project area. In addition, if one or more of these species is listed prior to the completion of your project, unnecessary delays may be avoided by considering project impacts to candidates now.

Species	Expected Occurrence
Swift fox <i>Vulpes velox</i>	Grasslands Statewide
Mountain plover <i>Charadrius montanus</i>	Grasslands statewide
Sturgeon chub <i>Macrhybopsis gelida</i>	Powder & Bighorn river drainages

Swift Fox - The swift fox is the smallest member of the North American canids (4.6-6.4 pounds), about the size of a house cat. It can be separated easily from the more common red fox (*Vulpes vulpes*) by its small size and black-tipped, rather than white-tipped tail. The fur is orange-yellow above with frosty or black tips. Side and belly fur is white or light yellow. It prefers shortgrass prairie habitat, but may be found throughout the state in areas generally lacking tall grass, shrubs or woody vegetation and where topography is flat or gently rolling. Several studies have documented a close association between the swift fox and prairie dog (*Cynomys* spp.) colonies. Declines are thought to be due to conversion of native habitat to for cultivation and competition or predation by coyotes (*Canis latrans*) and red fox.

The swift fox is a candidate species for which the Service has recently determined that listing is warranted but precluded at this time. Despite its listing being precluded at this time by other higher priority actions, the Service remains concerned regarding the status of this species. In view of the probable future listing of this species, we recommend that any assessment also analyze potential impacts of the proposed project on the swift fox.

Mountain Plover - The Service has recently completed the status review of the mountain plover. Available data indicate that population numbers are declining rangewide and suggest that listing this species as either threatened or endangered is warranted. Because listing of this species is likely, the Service recommends surveys for mountain plovers to minimize negative impacts to nesting birds. Mountain plover breeding and wintering habitats are known to include grasslands, mixed grassland areas and short-grass prairie, shrub-steppe, plains, alkali flats, agricultural lands, cultivated lands, sod farms, and prairie dog towns. Plovers may nest on sites where vegetation is

Mr. Stephen G. Thornhill

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Whooping crane (<i>Grus americana</i>)	Endangered	Migrant.
Ute Ladies-tresses (<i>Spiranthes diluvialis</i>)	Threatened	Platte River drainages below Alcoova and Cheyenne and Niobrara drainages.

Ute Ladies'-tresses - Ute Ladies'-tresses, a threatened species, is known to occur in the project area. Ute ladies'-tresses is a perennial, terrestrial orchid with stems 2 to 5 dm tall, narrow leaves, and flowers consisting of few to many small white or ivory flowers clustered into a spike arrangement at the top of the stem. It blooms from late July through August, however, depending on location and climatic conditions, orchids may bloom in early July or still be in flower as late as early October. The Ute ladies'-tresses is endemic to moist soils near wetland meadows, springs, lakes, and perennial streams. It occurs generally in alluvial substrates along riparian edges, gravel bars, old oxbows, and moist to wet meadows at elevations from 4,200 to 7,000 feet. The orchid colonizes early successional riparian habitats such as point bars, sand bars, and low lying gravelly, sandy, or cobbly edges, persisting in those areas where the hydrology provides continual dampness in the root zone through the growing season. Recent discoveries of orchid colonies in Wyoming and Montana indicate that surveys for and inventories of orchid occurrences continue to be an important part of orchid recovery planning and implementation.

In order to recover the orchid, it is important that surveys be conducted in areas of potential habitat and in response to impending impacts. Ute ladies'-tresses seems generally intolerant of shade and is found primarily in open grass and forb-dominated sites where vegetation is relatively open and not dense or overgrown. The plants usually occur as small scattered groups. Ute ladies' tresses orchid can only be reliably located and identified when it is flowering, which typically occurs sometime during the period from mid-July through mid-September. Surveys are conducted by walking or otherwise closely scrutinizing areas of potential habitat looking for flowering stalks. Surveys conducted at other times of the year are not reliable and are therefore not acceptable to the Service for purposes of clearance under section 7 of the Act. Surveys should be conducted by knowledgeable botanists trained in conducting rare plant surveys. The Service does not maintain a list of "qualified" surveyors but can refer those wishing to become familiar with the orchid to experts who can provide training/services.

Black-footed Ferret - Black-footed ferrets may be effected if prairie dog colonies are impacted. If black-tailed prairie dog (*Cynomys ludovicianus*) colonies or complexes greater than 79 acres will be disturbed, surveys for ferrets should be conducted even if only a portion of the colony or complex will be disturbed. If a field check indicates that prairie dog towns may be affected, you should contact this office for guidance on ferret surveys.

Additionally, the current alignment of the southern rail spur that crosses the Thunder Basin National Grasslands passes through a prairie dog complex proposed for future reintroduction of black-footed ferrets. Additional human disturbance and access into this area may adversely affect the quality of this area as a ferret reintroduction site. Therefore, we suggest you coordinate

sparse or absent, or near closely cropped areas, manure piles or rocky areas. Mountain plovers are rarely found near water and show a preference for previously disturbed areas or modified habitat. If a field check indicates that mountain plover habitat may be affected, you should contact us for guidance on plover surveys. I have enclosed a copy of the mountain plover survey guidelines for your use.

Sturgeon Chub - The Service has recently determined that listing of the sturgeon chub is warranted, but precluded by higher priority actions. Despite its listing being precluded at this time by other higher priority actions, the Service remains concerned regarding the status of this species. In view of the probable future listing of this species, we recommend that any assessment also analyze potential impacts of the proposed project on the sturgeon chub. The sturgeon chub is a small, pale minnow that evolved in large, free-flowing riverine systems, characterized by swift flows, highly variable flow regimes, braided channels, high turbidity, and sand/fine gravel substrates. Sturgeon chub are typically found in areas with gravel and/or sand substrates with greatest species abundance in shallower, gravel riffles. Sturgeon chub was historically found throughout many of the Great Plains tributaries to the Missouri River, but currently known in Wyoming only in the Powder River. Habitat restoration and reintroduction of the chub into suitable habitat are being considered as tools for recovery.

Migratory Birds

Please recognize that consultation on listed species does not remove your obligation to protect the many species of birds, raptors, and eagles protected under the Migratory Bird Treaty Act (MBTA) and Bald and Golden Eagle Protection Act (BGEPA). Of particular focus are the mountain plover (candidate species) and those species on the enclosed list of Migratory Bird Species of Management Concern in Wyoming.

The MBTA, 16 U.S.C. 703, enacted in 1918, prohibits the taking of any migratory birds, their parts, nests, or eggs except as permitted by regulations and does not require intent to be proven. Section 703 of the Act states, "Unless and except as permitted by regulations ... it shall be unlawful at any time, by any means or in any manner, to ... take, capture, kill, attempt to take, capture, or kill, or possess ... any migratory bird, any part, nest, or eggs of any such bird..." The BGEPA, 16 U.S.C. 668, prohibits knowingly taking, or taking with wanton disregard for the consequences of an activity, any bald or golden eagles or their body parts, nests, or eggs, which includes collection, molestation, disturbance, or killing. Violation of these prohibitions is a criminal violation regardless of where the activity occurs, whether on public or private lands.

Work that may adversely affect a migratory bird or eagle, their young, eggs, or nests (for example, if you are going to construct track, roads, or power lines in the vicinity of a nest), should be coordinated with our office before any actions are taken. Removal or destruction of such nests, or causing abandonment of a nest could constitute violation of the above statutes. Removal of nests or nest trees is prohibited, but may be allowed once young have fledged and/or a permit has been issued. In either case, timing is a significant consideration and you need to

well as improving water quality, maintaining the water table, controlling flooding, and providing shade and cover. In view of their importance and relative scarcity, impacts to such streamside and riparian areas should be avoided. Any potential, unavoidable encroachment into these areas should be minimized and quantitatively assessed in terms of functions and values, areas and vegetation type lost, potential effects on wildlife, and streams (bank stability and water quality). Measures to compensate for unavoidable losses of riparian areas should be developed and implemented as part of the project.

Environmental Contaminants

Increased traffic and new rail lines may increase the potential for derailments and diesel fuel spills. Your assessment should address potential impacts of such spills and outline a spill contingency plan. Additionally, railroad ties treated with certain chemicals may pose a contamination hazard. Please identify the chemicals used in treatment of the ties, as well as any environmental impacts that could be associated with the chemicals.

Scope of the Project

When one or more actions are determined by the Service to be interdependent or interrelated to the proposed action, or are indirect effects of the proposed action, they are considered part of the proposed action for consultation purposes. Indirect effects are caused by or result from the proposed action, are later in time, and are reasonably certain to occur. Interrelated actions are part of a larger action and depend on the larger action for their justification. Interdependent actions are actions having no independent utility apart from the proposed action. Determining if an action is interdependent or interrelated depends on whether the Federal, State, or private activity could occur "but for" the proposed action. At the April 29 scoping meeting held in Cheyenne, a representative of the railroad indicated that these additional lines would result in significantly increased coal production in the Powder River Basin. If this increase is reasonably expected to occur and, as indicated by the company representative, would not occur "but for" this rail line, impacts from the increased coal production should be analyzed as part of the project.

Documentation

Section 7(c) of Act requires that a biological assessment be prepared for any Federal action that is a major construction activity to determine the effects of the proposed action on listed and proposed species. If a biological assessment is not required (i.e., all other actions), the lead agency is responsible for review of proposed activities to determine whether listed species will be affected. I would appreciate the opportunity to review any such determination document.

For those actions where a biological assessment is necessary, it should be completed within 180 days of receipt of a species list, but can be extended by mutual agreement between the lead agency and the Service. If the assessment is not initiated within 90 days of receipt of a species list, the list of threatened and endangered species should be verified with me prior to initiation of

allow for this in your project planning. We also recommend the project area be surveyed for raptor nests and roost areas.

To minimize effects on nesting raptors and the possibility of "take" under the Migratory Bird Treaty Act, the Service believes protective/mitigation measures are necessary and best accomplished by outlining specific measures to minimize impacts and the potential for "take." Any analysis of the project and any raptor management section should address potential adverse impacts including habitat loss or degradation, nest abandonment, and electrocution/collision hazards to raptors and specifically outline all measures that will be implemented to minimize adverse effects to these species. Your planning document should describe proposed protective measures including, but not limited to: possible timing restrictions for construction, establishment of buffer zones around raptor nests, proper raptor-proofing of power lines, and placement of multiple wells on one pad to minimize site disturbance. Projects that create electrocution/collision hazards should include a monitoring program to detect problem areas. Since carcasses may not persist for long periods of time, searches should be conducted frequently. Any bird mortalities or strikes should be reported immediately to the Fish and Wildlife Service's Law Enforcement Office in Casper at 307/261-6365 and to our Cheyenne Field Office at 307/772-2374.

Sensitive Plants

Federal agencies are also encouraged to consider sensitive plant species or species at risk in project review. Your consideration of these species is important in preventing their inclusion on the Endangered Species List. The Wyoming Natural Diversity Database maintains the most current information on sensitive plants in Wyoming. The database must charge for data retrieval to financially support the database and staff. The staff can be contacted at (307) 766-5026.

Wetlands/Riparian Areas

In meeting their responsibilities for wetland protection and conservation, all action agencies must assure that proposed activities do not result in the taking of any Federal trust wildlife resources nor lead to the contamination of other water sources. The Service recommends measures be taken to avoid any wetland losses in accordance with Section 404 of the Clean Water Act, the Fish and Wildlife Coordination Act, Executive Order 11990 (wetland protection) and Executive Order 11988 (floodplain management) as well as the goal of "no net loss of wetlands." If wetlands may be destroyed or degraded by the proposed action, those (wetlands) in the project area should be inventoried and fully described in terms of functions and values. Acreage of wetlands, by type, should be disclosed and specific actions outlined to minimize impacts and compensate for all unavoidable wetland impacts.

Riparian or streamside areas are a valuable natural resource and impacts to these areas should be avoided whenever possible. Riparian areas are the single most productive wildlife habitat type in North America. They support a greater variety of wildlife than any other habitat. Riparian vegetation plays an important role in protecting streams, reducing erosion and sedimentation as

the assessment. The biological assessment may be undertaken as part of the agency's compliance of section 102 of the National Environmental Policy Act (NEPA), and incorporated into the NEPA documents. The Service recommends that biological assessments include:

1. a description of the project;
2. a description of the specific area potentially affected by the action;
3. the current status, habitat use, and behavior of threatened and endangered species in the project area;
4. discussion of the methods used to determine the information in item 3;
5. direct and indirect impacts of the project to threatened and endangered species;
6. an analysis of the effects of the action on listed and proposed species and their habitats including cumulative impacts from Federal, State, or private projects in the area;
7. measures that will reduce or eliminate adverse impacts to threatened and endangered species;
8. the expected status of threatened and endangered species in the future (short and long term) during and after project completion;
9. determination of "is likely to adversely affect" or "is not likely to adversely affect" for listed species;
10. determination of "is likely to jeopardize" or "is not likely to jeopardize" for proposed species;
11. citation of literature and personal contacts used in the assessment.

If it is determined that any Federal agency program or project "is likely to adversely affect" any listed species, formal consultation should be initiated with this office. Alternatively, informal consultation can be continued so we can work together to determine how the project could be modified to reduce impacts to listed species to the "not likely to adversely affect" threshold. If it is concluded that the project "is not likely to adversely affect" listed species, I should be asked to review the assessment and concur with the determination of not likely to adversely affect.

A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare biological assessments. However, the ultimate responsibility for section 7 compliance remains with the Federal agency, and written notice should be provided to the Service upon such a designation. I recommend that Federal agencies provide their non-Federal representatives with proper guidance and oversight during preparation of biological assessments and evaluation of potential impacts to listed species.

Section 7(d) of the Act requires that the Federal agency and permit or license applicant shall not make any irreversible or irretrievable commitment of resources which would preclude the formulation of reasonable and prudent alternatives until consultation on listed species is completed.

These preliminary scoping comments are made pursuant to the National Environmental Policy Act, the Endangered Species Act and Fish and Wildlife Coordination Act. Please keep this office informed of any developments or decisions concerning this project.

Mr. Stephen G. Thornhill

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If you have any questions please contact Mary Jennings of my staff at the letterhead address or phone (307) 772-2374, extension 32.

Sincerely,

Mary E Jennings
for Michael M. Long
Field Supervisor
Wyoming Field Office

Enclosures (3)

cc: Director, WGFD, Cheyenne, WY
Nongame Coordinator, WGFD, Lander, WY
Holland and Hart, Jackson, WY



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Date of planned activity	Number of surveys required
March 15 through March 31	1
April 1 through June 30	2
July 1 through August 15	1

- If an active nest is found in the survey area, the planned activity should be delayed 37 days, or one week post-hatching. If a brood of flightless chicks is observed activities should be delayed at least seven days.
- Grading activities and new road construction should be minimized during the period from May 25 through June 30 to lessen hazards to young chicks. More plover activity has been identified on established roads than on two-tracks.
- No new surface-disturbing activities should be allowed during the reproductive period of April 1 through June 30 within 200 m of identified concentration areas. These are defined as areas where broods and/or adults have been found in the current year or documented in at least two of the past three years.

MOUNTAIN PLOVER DRAFT SURVEY GUIDELINES
Wyoming Field Office, U.S. Fish and Wildlife Service, May 1998

The mountain plover (*Charadrius montanus*) is a small bird (about 17.5 cm, 7 in.) About the size of a killdeer (*C. vociferus*). It is a light brown above with a lighter colored breast, but lacks the contrasting dark breast-belt common to many other plovers. During the breeding season it has a white forehead and a dark line between the beak and eye, which contrasts with the dark crown.

Mountain plover breeding and wintering habitats are known to include grasslands, mixed grassland areas and short-grass prairie, shrub-steppe, plains, alkali flats, agricultural lands, cultivated lands, sod farms, and prairie dog towns. Plovers may nest on sites where vegetation is sparse or absent, or near closely cropped areas, manure piles or rocky areas. Mountain plovers are rarely found near water and show a preference for previously disturbed areas or modified habitat. They may be found on heavily grazed pastures throughout their breeding range and may selectively nest in or near prairie dog towns.

The Service has recently completed the status review of the mountain plover. Available data indicate that population numbers are declining rangewide and suggest that listing this species as either threatened or endangered is warranted. Because listing of this species is likely, the Service recommends surveys for mountain plovers to minimize negative impacts to nesting birds. The Service recommends surveys for mountain plovers in all suitable habitat as well as avoidance of nesting areas to minimize impact to plovers in a site planned for development. Listed below are the Service's recommended survey guidelines. While the Service believes that plover surveys, avoidance of nesting and brood rearing areas, and timing restrictions (avoidance of important areas during nesting) will lessen the chance of direct impacts to and mortality of individual mountain plovers in the area, these restrictions do nothing to mitigate indirect effects, including changes in habitat suitability and habitat loss. Surveys are, however, a necessary starting point.

- Visual observation of the area should be made within 200 m of the proposed action to detect the presence of plovers. All plovers located should be observed long enough to determine if a nest is present. These observations should be made from within a stationary vehicle, as plovers do not appear to be wary of vehicles.
- If no visual observations are made from vehicles, the area should be surveyed on ATV's. Extreme care should be exercised in locating plovers due to their highly secretive and quiet nature. Surveys by foot are not recommended because plovers tend to flush at greater distances when approached using this method. Finding nests during foot surveys is more difficult because of the greater flushing distance.
- Surveys should be conducted no more than 14 days prior to the date actual ground disturbance activities begin. If two surveys are required, they should be made at least 14 days apart, with the last survey no more than 14 days prior to the project start-up date.
- The number of surveys required to clear a site for mountain plovers prior to beginning a planned activity is dependent upon the start-up date, as shown below:

General Comments

The proposal would result in approximately 28 miles of new line plus an increase from four trains per day up to 35 or 40 trains, so the potential for a derailment will increase. The tracks will parallel and/or cross several major rivers in Wyoming and South Dakota, including the Cheyenne, Bad, Missouri, James, and Big Sioux. A derailment could result in a diesel fuel spill, which could have adverse impacts on surface water quality and fish and wildlife resources both locally and for some distance downstream. The Fish and Wildlife Service recommends that the Environmental Impact Statement include a discussion of how and when a spill contingency plan would be developed.

There will likely be numerous wetland and stream crossings along the route proposed for construction of the new rail line. The Service recommends that the following guidance be implemented in the construction plans.

- Crossing of wetland basins should be done when dry conditions exist, if possible.
- Stream bottoms and wetlands impacted by construction activities should be restored to preproject elevations. In cases where wetland basins to be crossed are formed because of impermeable soils, the soil area should be packed to reestablish the impermeability of the basin's floor.
- Stream crossings should not be undertaken during fish spawning periods. Most spawning occurs in April, May, and June. Additionally, the Cheyenne River is considered a Class III. Fishery Resource, and precautions should be undertaken to avoid construction impacts during the fish spawning season.
- Streams should be crossed perpendicular to flow.
- Removal of vegetation and soil should be accomplished in a manner to reduce soil erosion and to disturb as little vegetation as possible. Particular care should be taken to prevent soil from entering the watercourse.
- Grading operations and reseedling of indigenous species should begin immediately following construction activities.

Work involving the alteration or disturbance of wetlands or streams may require a section 10/404 permit from the U.S. Army Corps of Engineers. The Corps Wetland Regulatory Offices in Pierre, South Dakota, and Cheyenne, Wyoming, should be invited to participate in early project planning.

Throughout South Dakota there are numerous Waterfowl Production Areas managed by the Service as part of the National Wildlife Refuge system. If the railroad alignment impacts these areas, right-of-way permits and compatibility determinations will be required.

In accordance with section 7 of the Endangered Species Act, we have determined that the following federally listed species may occur in the project area. This list is considered valid for 90 days.

Ute ladies'-tresses, a threatened species, may occur in the project area. The Ute ladies'-tresses is endemic to moist soils near wetland meadows, springs, lakes, and perennial streams. It occurs generally in alluvial substrates along riparian edges, gravel bars, old oxbows, and moist to wet meadows at elevations from 4,200 to 7,000 feet. The orchid colonizes early successional riparian habitats such as point bars, sand bars, and low-lying gravelly, sandy, or cobbly edges, persisting in those areas where the hydrology provides continual dampness in the root zone through the growing season. Recent discoveries of orchid colonies in Wyoming and Montana indicate that surveys for and inventories of orchid occurrences continue to be an important part of orchid recovery planning and implementation. In order to recover the orchid, it is important that surveys be conducted in areas of potential habitat and in response to impending impacts. Ute ladies'-tresses seems generally intolerant of shade and is found primarily in open grass and forb-dominated sites where vegetation is relatively open and not dense or overgrown. The plants usually occur as small scattered groups. Ute ladies'-tresses orchid can only be reliably located and identified when it is flowering, which typically occurs sometime during the period from mid-July through mid-September. Surveys are conducted by walking or otherwise closely scrutinizing areas of potential habitat looking for flowering stalks. Surveys conducted at other times of the year are not reliable and are therefore not acceptable to the Service for purposes of clearance under section 7 of the Act. Surveys should be conducted by knowledgeable botanists trained in conducting rare plant surveys. The Service does not maintain a list of "qualified" surveyors but can refer those wishing to become familiar with the orchid to experts who can provide training/services.

The Topeka shiner (*Notropis topeka*) is a small fish proposed for Federal listing as an endangered species. It occurs in small tributary streams in eastern South Dakota. The sturgeon chub (*Macrhybopsis galida*) and the sicklefin chub (*Macrhybopsis neeki*) are two Federal candidate species which occur in larger rivers within South Dakota. The swift fox (*Vulpes velox*), the lynx (*Felis canadensis*), and the mountain plover (*Charadrius montanus*) also may occur within the project area and are listed as Federal candidate species. Candidate species are species for which the Service has information to support listing but is precluded from listing because of other listing priorities. There is no legal requirement to protect candidate species, but it is within the spirit of the Act to consider these species and their habitat requirements. Consideration of candidate species now can potentially avoid conflicts later should these species be listed.

Listed Species	Expected Occurrence
Bald eagle (<i>Haliaeetus leucocephalus</i>)	Migration, winter resident, and potential nester
Peregrine falcon (<i>Falco peregrinus</i>)	Migration
American burying beetle (<i>Microphorus americanus</i>)	Anywhere in South Dakota with significant humus and topsoil suitable for the burying of carrion
Black-footed ferret (<i>Mustela nigripes</i>)	Possible inhabitant of prairie dog towns
Whooping crane (<i>Grus americana</i>)	Migration
Pallid sturgeon (<i>Scaphirhynchus albus</i>)	Missouri River
Piping plover (<i>Charadrius melodus</i>)	Migration and summer breeding
Interior least tern (<i>Sterna antillarum</i>)	Migration and summer breeding
Ute ladies'-tresses (<i>Spiranthes diluvialis</i>)	Platte, Cheyenne, and Niobrara River drainages

The American burying beetle is a carrion feeder that buries its sustenance below the ground's surface. Habitat for the beetle has not been clearly defined. Recent captures (post 1960) in the Midwest were in mixed agricultural lands, including pastures, mowed fields, and second growth timber. Current distribution, as outlined by captures, suggests that the beetle can occur in a grassland habitat. At this time, any habitat in South Dakota with significant humus and/or topsoil suitable for burying carrion is considered potential beetle habitat.

All prairie dog towns should be considered potential habitat for the black-footed ferret. If prairie dog towns exist on the project site, ferret surveys should be conducted prior to any construction activity on the towns. Ferret survey guidelines will be provided at your request. Of special concern is a rail spur proposed in Wyoming that would require right-of-way in the Forest Service's Thunder Basin National Grasslands. This spur could impact an area proposed for reintroduction of black-footed ferrets.

Golden eagles (*Aquila chrysaetos*) and other raptors, such as the ferruginous hawk (*Buteo regalis*), as well as many other migratory bird species, may nest in the project area. These birds, including their nests, eggs, and young, are protected under the Migratory Bird Treaty Act. The golden eagle also is protected under the Bald Eagle Protection Act. If birds are found nesting within the proposed development area, this office can be contacted for recommendations to avoid conflicts with the birds.



PAUL E. GERTLER

Migratory Bird Species of Management Concern in Wyoming
 Based on Migratory Nongame Birds of Management Concern in the United States: the 1995 List,
 Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Washington, D.C.,
 September 1995.

Species	Listing criteria ²					Reason for concern ³			
	D	C	P	B	A	D	P	H	T
COMMON LOON ¹	X								X
AMERICAN BITTERN	X					X			
WHITE-FACED IBIS		X					X		
TRUMPETER SWAN	X	X							
NORTHERN HARRIER	X								X
Northern Goshawk	X	X					X		
Ferruginous Hawk	X	X							
SNOWY PLOVER	X	X						X	X
Mountain Plover	X	X	X				X		
Upland Sandpiper	X							X	
Long-billed Curlew	X		X				X		X
BLACK TERN	X	X		X		X			
BARN OWL	X								X
Burrowing Owl	X	X				X			X
Short-eared Owl	X					X			
Black Swift			X						
Vaux's Swift			X						
Red-headed Woodpecker	X					X			
OLIVE-SIDED FLYCATCHER	X		X	X		X			
Gray Flycatcher			X						
Veery	X					X			
LOGGERHEAD SHRIKE	X			X		X			

B4

Office of Federal Land Policy

122 West 25th Street • Herschler Bldg., 3 West • Cheyenne, WY 82002-0600 • 307-777-7331 • 307-777-5400 fax

June 17, 1998

Stephen G. Thornhill, Project Manager
 Burns & McDonnell
 9400 Ward Parkway
 Kansas City, MO 64114-3319

Re: Dakota, Minnesota and Eastern Railroad Corporation, Powder River Basin Expansion Project
 Finance Docket No. 33407
 Request for Human and Natural Resources Information

Dear Mr. Thornhill:

I am responding to your request that the state of Wyoming and its effected agencies review the list of topics you provided in your letter of May 11, 1998 and provide you with any further information that might be useful as a follow-up to the scoping meetings.

I am attaching the comments of the Department of Environmental Quality, the State Game and Fish Department, the State Geological Survey, the State Historic Preservation Office, the State Engineer's Office and a letter you may have received from the Department of Transportation previously but the information is still valid so I enclose a copy of it as well for your information.

With regard to public lands, any intention to locate any type of facility on state lands requires that an application for easement be filed. All easements must be considered by the Wyoming State Board of Land Commissioners. Easement application packets are available by contacting the Office of State Lands and Investments at (307) 777-6545. Additional land uses such as special use leases and temporary permits for access purposes, etc...are also handled through the Office of State Lands and Investments.

Please understand that this is still the scoping phase of the environmental review process. These comments are intended to identify issues that these state agencies feel should be addressed in the drafting of the environmental impact statement. They do not necessarily reflect the final position of the State of Wyoming on these issues. In addition, please note

Migratory Bird Species of Management Concern in Wyoming

2

Species	Listing Criteria					Reason for Concern			
	D	C	P	B	A	D	P	H	T
Virginia's Warbler			X						
Dickcissel	X					X			
Cassin's Sparrow			X	X					
BAIRD'S SPARROW	X	X	X						X
Brewer's Sparrow				X					
Lark Bunting			X						
Grasshopper Sparrow	X	X		X					X
McCown's Longspur			X						
Chestnut-collared Longspur			X						

1. Species in capitals were also on the 1987 list.

2. Listing criteria designated by X symbol in appropriate column. D = Delphi, a process in which known bird experts are polled to identify species at risk when no population trend data are available. C = Candidate, species listed as former Category 1 or Category 2 under the Endangered Species Act. P = Partners in Flight (PIF), species having a composite PIF rank score of at least 24. B = Breeding Bird Survey (BBS), species has a long-term population decline documented by the BBS. A = Audubon Christmas Bird Count (ACBC), species has a long-term population decline documented by the ACBC.

3. Reasons for concern designated by X symbol in appropriate column. D = Documented or apparent population decline; P = small population or limited distribution; H = dependence on vulnerable or restricted habitats; and T = specific threats.

For a more detailed explanation of selection criteria and reasons for concern, see Migratory Nongame Birds of Management Concern in the United States: the 1995 List, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Washington, D.C., September 1995.

Burns & McDonnell
 June 17, 1998
 Page Two

that these comments are strictly a response to your request of May 11, 1998. The State of Wyoming's formal comments on the Draft Scope of Study will be formally submitted to the Surface Transportation Board by the deadline of July 10, 1998.

Finally, as a matter of course I would like to take this opportunity to review the preferred procedure for corresponding with the various agencies of the State of Wyoming. Wyoming's State Clearinghouse, a function of the Office of Federal Land Policy, coordinates review of federal natural resource environmental policies and management or action plans with the State's natural resource policies and management or action plans. To accomplish that task, the Clearinghouse distributes pertinent federal documents to affected state agencies, collects the state agency comments, and either forwards those comments under common cover to the lead federal agency or develops a single state position endorsed by the Governor which then covers the agency comments.

To help us perform that function and return state comments to you in a timely manner, please send the clearinghouse 15 copies of all NEPA documents, correspondence, information requests, etc. with a minimum of thirty (30) days to process those documents. This eliminates the need to mail to state agencies directly.

Those copies should be sent to me at:

State Clearinghouse Coordinator
 Office of Federal Land Policy
 Herschler Building, 3W
 Cheyenne, WY 82002-0600

Thank you for the opportunity to comment. Please feel free to contact me should you require any further assistance.

Sincerely,

 Julie L. Hamilton
 Planning Consultant

Enclosures





JUN 18 1988

EPA Region VIII Scoping Comments
 Concerning the Powder River Basin Expansion Project
 Draft Environmental Impact Statement

Ref: 8EPR-EP

Stephen G. Thornhill, Project Manager
 Burns and McDonnell
 9400 Ward Parkway
 Kansas City, MO 64114-3319

Re: Scoping Comments for the
 Powder River Basin Expansion
 Project, Draft Environmental
 Impact Statement

Dear Mr. Thornhill:

We understand that your firm, Burns & McDonnell, is serving as a third party consultant to the Surface Transportation Board for the preparation of an Environmental Impact Statement (EIS). The proposed project involves reconstruction of existing lines and new construction by the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) in Wyoming, South Dakota and Minnesota to facilitate access to coal mines located in the Powder River Basin of Wyoming.

The Region VIII office of the Environmental Protection Agency (EPA) offers the following comments for your consideration in the preparation of the referenced document. Our comments are applicable to project activities in Wyoming and South Dakota. The Region V office of the EPA should be contacted for project activity comments in Minnesota.

The EPA appreciates the opportunity to provide scoping comments on the referenced project. If you have any questions regarding our comments, please contact Mike Hammer of my staff at (303) 312-6563.

Sincerely,

 Cindy Cody, Chief
 NEPA Unit
 Ecosystem Protection Program

cc: Mike McMullen, EPA Region V

GENERAL

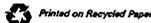
This document addresses issues of key importance to the EPA as well as items where experience has demonstrated many analyses are lacking. EPA appreciates the effort and resources that are committed to the preparation of documents of this nature and hopes to facilitate the process with these comments.

Each project analysis has its own unique scope, affected environment, past and proposed impacts, and will require its own level of analysis. For this reason, it is not our intent to provide either a checklist or standard format. Instead, we hope to present you with EPA Region VIII's concept of the kinds of information and level of analysis we feel is appropriate for this type of project to effectively facilitate the disclosure of its proposed impacts and mitigation to the public.

Readability, a logical presentation of information, consistency between sections of the assessment and clarity are important to the reader. Many documents we review have neither a clear and logical Purpose and Need statement nor adequate explanation related to the selection of analysis area boundaries. Highway projects are generally confined to the narrowly defined impact areas along the right of way. However, potential impacts to biodiversity, wildlife and fish, wetlands, stream drainage patterns, fragmentation and connectivity to other projects, may extend beyond such boundaries. An appropriate analysis area should encompass the potentially affected environment and should be a logical unit for projecting anticipated impacts and for measuring actual effects.

All activities and associated impacts related to project implementation including off-site impacts such as material sources, storage and disposal areas must be disclosed. Statements made in the assessment should be substantiated whether by data and analysis included in the document, or by reference to readily available supporting documents. When referencing documents or data not included in the NEPA document, a summary, matrix or data table displaying the information should be included to ensure the reader understands the quality and type of analysis actually completed. Environmental documents frequently do not reflect the level of analysis and data compilation actually completed. Unless clearly documented, the reviewer is unable to establish whether data exists to support conclusions reached.

If subject analysis is tiered to guiding documents, such as



a programmatic Environmental Impact Statement or to related project level Environmental Impact Statements, they must be identified as well as any Standards and Guidelines or project-specific requirements the tiered-to documents prescribe for the type of proposal being analyzed. Additionally, more specific measures are often developed for individual alternatives to mitigate their particular impacts. These measures, as well as their anticipated effectiveness in accomplishing their planned purpose, must also be disclosed.

WATERSHED

The document should clearly describe water bodies, in particular those streams/rivers, both perennial and intermittent which will be affected by project induced activities. Identifying affected watersheds on maps of the various alternatives helps convey their relationship to project activities. The assessment should reveal what data is available and the condition (reliability, gaps in data, etc.) of that information.

The EPA considers the collection of baseline water quality data at the project level important to provide a comparison with projected impacts as well as actual project impacts. Where water quality information for individual water bodies exists, it must be presented. This would include inventories; baseline data information such as temperature, turbidity, the presence of toxic substances; water quality and the existence of any known point or non-point pollution sources or other problems. Other information relevant to the analysis, such as aquatic species habitat and the condition and productivity of that habitat, should also be included. Existing water quality standards applicable to the affected water bodies should be presented to provide a basis for determining whether beneficial uses will be protected and water quality standards met.

SECTION 319 (CLEAN WATER ACT - NONPOINT SOURCES)

A discussion of area developments, geology, topography, soils and stream stability in terms of erosion and mass failure potential may be necessary to adequately portray the potential risk to water quality, aquatic habitat and other resources from the implementation of specific alternatives. Section 319 of the Clean Water Act requires that Federal agencies comply with State and Local pollution requirements. Therefore, the appropriate State-identified Best Management Practices to reduce potential non-point sources of pollution from this project's proposed activities must be designed into the alternatives under consideration and disclosed.

The proposed monitoring program to be used for determining effects on water quality and the aquatic environment must be disclosed in the assessment. The design of this program must at a minimum:

- 1) ensure State water quality objectives are met,
- 2) provide a mechanism to initiate additional measures if needed to meet State water quality standards and goals,
- 3) evaluate the effectiveness of the Best Management Practices utilized, relative to both construction and operation in this project,
- 4) evaluate the accuracy of estimates made in the analysis, and
- 5) provide a feedback mechanism for future projects, i.e. additional rail line extensions.

ANTI-DEGRADATION (CLEAN WATER ACT)

Activities associated with rail line construction projects, particularly when considering the cumulative effects of emergency and scheduled repairs and maintenance, have the potential to degrade water quality. If an anti-degradation analysis is required as specified in 40 CFR 131.12 [also see 40 CFR 131.12(a)(2); E.O. 12088 (CWA Section 313); and E.O. 12372 (CWA Section 319)], it must be included in the document.

WETLANDS

Documentation must clearly describe the existing wetlands within the analysis area; their acreage, type and ecologic role and how both acreage and function will be protected. Right-of-way construction clearing and earthwork, i.e. cut and fill operations, generally include sedimentation and hydrologic impacts which at some level may cause changes to surface and subsurface drainage patterns and ultimately, wetland integrity and function. Executive Order 11990 requires that all Federal Agencies protect wetlands.

Avoidance of wetland losses is a primary requirement of the Section 404(b)(1) Guidelines [40 CFR 230.10(a)]. The Corps of Engineers (COE) and the EPA, through their Mitigation Memorandum of Agreement, state they will "...strive to avoid adverse impacts and offset unavoidable adverse impacts to existing aquatic resources, and for wetlands, will strive to achieve a goal of no overall net loss of values and functions." Avoidance is required before mitigation will be considered. In addition, where applicable, the discussion must address the rebuttable presumption that there are less damaging upland alternatives, e.g. enhancement of existing transportation system, alternative methods of transporting the product, etc. Failure to comply with all requirements of the 404(b)(1) Guidelines will result in the EPA requesting denial of a Sec. 404 permit.

The document must provide a clear description of anticipated direct, indirect and cumulative adverse impacts to wetlands from

all planned activities. In accordance with the Clean Water Act, wetland mitigation strategies, methods and programs should be disclosed in the assessment and included in the overall site mitigation plan. The COE should also be consulted for comments on wetland issues and language must be included that informs the public of the potential requirement of a Section 404 permit for any discharge of dredged or fill material into waters of the U.S., including wetlands.

FLOODPLAIN

Where routing will require construction activities in floodplains these activities will need to comply with provisions of Executive Order 11988. Of particular interest are impacts to riparian vegetation and its related wildlife habitat function.

AIR QUALITY

Both the direct and indirect effects of the various alternatives on air quality must be quantified. The air quality analysis must demonstrate that the proposed alternative would not cause or contribute to any violations of the National Ambient Air Quality Standards (NAAQS), that it will not cause the air quality to degrade by more than any applicable PSD (Prevention of Significant Deterioration) increment, and that it will not cause or contribute to visibility impairment.

Estimating potential effects through the use of EPA approved computer dispersion models on the project impact area may be beneficial to the analysis and is required under the Clean Air Act for some projects to show that negative impacts on the attainment of NAAQS will not occur. The EPA and/or applicable state air quality agency should be consulted on appropriate models for use. The EPA's *Compilation of Air Pollutant Emission Factors (AP-42)* provides emission factors useful in formulating emission calculations. However, the State air quality agency should be contacted regarding State or area-specific emission factors which may be available. In addition, the applicable state and local agencies should concur on any assumptions related to growth estimates, activity levels, and future infrastructure projections. Any existing air quality and meteorological monitoring data should be presented, as well as needed data gathering to adequately perform air quality analysis and any monitoring proposed.

BIODIVERSITY

While generally not a major issue of concern for minor rail line improvements biodiversity may be a critical consideration for new alignments, major reconstruction or when special habitats (i.e. wetlands, threatened and endangered species habitat) will be affected. The state of the art for this issue is changing

the local environment. A summary listing of other projects occurring in the vicinity without an accompanying project analysis does not meet the intent of NEPA.

Connected actions which result in increased cumulative effects are of additional concern. Some examples are:

Linked Developments - If the construction of a new rail line or reconstruction of an existing rail line will likely facilitate or cause additional developments, the effect of these linked impacts must also be analyzed.

Maintenance and Debris Disposal - Rail line standards and design have a major effect on scheduled and unscheduled maintenance needs. The needs for normally scheduled maintenance such as ditch cleaning and disposal of debris, as well as anticipated but unscheduled maintenance, such as debris from slumps, should be analyzed and planned for during design phase of construction and reconstruction projects. Activities that have an adverse effect on wetlands and riparian areas are inappropriate.

ENVIRONMENTAL JUSTICE

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" requires the EPA under its NEPA and Section 309 review responsibilities "... to routinely review the environmental effects of major Federal actions significantly affecting the quality of the human environment." In the event the Social Impact Analysis (SIA) portion of the project assessment reveals disproportional impacts on covered communities in the areas of human health, social, and economic effects these impacts and appropriate mitigation measures need to be discussed.

We will review the DEIS using the EPA's Guidance for Addressing Environmental Justice Conducted Pursuant to Section 309 of the Clean Air Act.

As stated earlier, this scoping discussion is not intended to serve as an all-inclusive list or a checklist. Instead, we have attempted to present the primary issues that EPA Region VIII considers most relevant for this type of project as well as those items that have not been sufficiently addressed in similar analyses. Our goal is to provide a basis for conducting project analyses that result in comprehensive assessment of the environmental effects, adequate public disclosure, and effectiveness of proposed mitigation measures for selecting the best alternative. We sincerely hope that these comments and suggestions prove beneficial to you and appreciate any comments or questions regarding the issues discussed.

rapidly.

The scale used for the analysis must be described and explained. A landscape scale perspective is generally considered appropriate unless the presence of biotic species that operate over a wide range of landscaped (i.e. wide ranging predators, neo-tropical birds, waterfowl, etc.) indicate a larger scale is needed for a specific component of the analysis. Most analyses of effects on the gene pool, connectivity to adjacent landscapes and fragmentation would be difficult or ineffective at a smaller than landscape scale. Where indicator species are used, they should be representative of discrete conditions (i.e. fidelity to a specific habitat or condition) rather than ubiquitous in their use of various habitats. The document should address:

1. The diversity and uniqueness of flora and fauna that exists in the analysis area. A review of local climatic diversity, topography and how well defined the ecotones are, may be of benefit in determining how much biodiversity exists. The presence of threatened, endangered or sensitive species; communities that are at the edge of their range; or the identification of "gap" habitats would indicate greater need for analysis that would homogenous habitats. (Note: a "gap" represents an element of diversity that is not represented in a protected area such as wilderness or a wildlife refuge. This may constitute a potential "gap" in perceived protection of total, existing diversity.) Similarly, a discussion of the presence of a large "natural" habitat near the proposed project which provides increased stability of local diversity would be appropriate.
2. The effects of the proposed alternative actions on the maintenance of diversity.
3. The cumulative effects of known past projects, approved future projects and proposed future projects on diversity stability, fragmentation, connectivity with adjacent landscapes, and disruption to processes or functions.
4. How the proposed project would improve, protect or adversely affect existing diversity.

CUMULATIVE IMPACTS

NEPA requires that cumulative impacts be addressed as a summary of the individual impacts of this and all other "reasonably foreseeable" projects, including activities on private or adjacent land irrespective of what agency or entity has decision-making authority or analysis responsibility. The cumulative, site-specific effects of these projects on the analysis area's environment must be analyzed and disclosed. A common inadequacy of documents is the lack of analysis or disclosure of the sum of individual effects of all projects on



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
ARMY CORPS OF ENGINEERS CENTRE
180 FIFTH STREET EAST
ST. PAUL, MN 55101-1828

June 24, 1998

Construction-Operations
Regulatory (98-05541-SF-JMO)

Mr. Stephen G. Thornhill
Burns and McDonnell
Engineers * Architects * Consultants
9400 Ward Parkway
Kansas City, Missouri 64114-3319

RE: Dakota, Minnesota & Eastern Railroad
Corporation - Finance Docket No. 33407
Powder River Basin Expansion Project
Preparation of an EIS - Request for
Human and Natural Resources Information

Dear Mr. McDonnell:

This is in response to your letter request of May 18, 1998, requesting comments from the Corps of Engineers concerning a 1.2 billion dollar proposal by Dakota, Minnesota and Eastern Railroad (DMERR) to construct approximately 275 miles of new rail in the states of Minnesota, South Dakota and Wyoming. We have reviewed the general information provided to us and offer these comments.

Impacts to Corps of Engineers Flood Control Projects in Minnesota

Before improvements can be made to the railway lines that pass through the communities of LeHillier, Mankato, Rochester, and Winona, the Corps of Engineers must first approve the planned improvements. Improvements to the rail lines in these communities could affect the existing flood control projects.

Exhibit C-2 - The existing Union Pacific rail line travels along the crest of the levee at LeHillier and immediately adjacent to the floodwall in Mankato. It is understood that the rail line improvements will include replacement of ballast, ties and rails and that there will be an increased frequency of trains. The concern is that completion of the improvements could result in increased loadings on the flood control project. If the decision is made to utilize the Union Pacific rail line, the Corps of Engineers would first have to determine the impacts to the flood control project before approval of the improvements could be made.

Printed on Recycled Paper



Page 2
Mr. Thornhill

Impacts to Natural Resources in Minnesota

As coal is transported by rail to Winona, some of this cargo may be transferred to barges at the Winona Commercial Harbor or some other commercial facility within Winona, Minnesota. This process could require an expansion of the commercial harbor, which would likely impact negatively on the Upper Mississippi River National Wildlife and Fish Refuge.

Other items which may result from this proposal are increased air emissions, and increased levels of noise adjacent to the refuge, and adjacent to river related recreation areas.

From the information provided in the letter dated May 18, 1998, it appears that the proposed EIS will adequately address issues related to the construction of new rail and the upgrading of existing rail from the Powder River Basin to Winona, Minnesota. Impacts of increased rail traffic over this section will also be addressed. However, it is not clear if the increased rail traffic will be addressed in areas south of Winona to LaCrosse and from there to final destinations.

Impacts to Water Resources, Including Wetlands, in Minnesota

Department of the Army permits are generally required when an activity involves the discharge of dredged or fill material into waters of the United States, including wetlands. Permits are also required for discharges associated with excavation and/or grading activities in waters of the United States. If there will be placement of new rail, upgrades or rebuilds, a Department of the Army permit will be required for such activities. Further, if the Winona harbor will be expanded in conjunction with rail development, a Department of the Army permit will be required for that activity.

This office handles regulatory permitting issues for Minnesota and Wisconsin. Regulatory permitting concerns for the state of South Dakota can be addressed to Mr. Steve Naylor at (605) 224-8531; regulatory permitting concerns for the state of Wyoming can be addressed to Mr. Matt Bilodeau at (307) 772-2300.

If you have any questions, contact Jan M. O'Malley in our

Page 3
Mr. Thornhill

LaCrosse office at (608) 784-8236 or Dana Werner in our St. Paul office at (612) 290-5326. In any correspondence or inquiries, please refer to the Regulatory number shown above.

Sincerely,

Ben A. Wopatz
Ben A. Wopatz
Chief, Regulatory Branch

Copy furnished:
Ms. Carol Cunningham
Burns and McDonnell
Engineers * Architects * Consultants
9400 Ward Parkway
Kansas City, Missouri 64114-3319



United States
Department of
Agriculture

Forest
Service

Rocky
Mountain
Region

Medicine Bow-Routt N.F.'s
2468 Jackson Street
Laramie, WY 82070-6535
<http://www.fs.fed.us/mwrnf>

B7

Reply to: 2730
Date: July 13, 1998

Victoria J. Rutson, Attorney
Surface Transportation Board
1925 K Street, NW
Room 506
Washington, DC 20423

Re: DM&E Railroad Proposal

Dear Ms. Rutson:

Enclosed please find our scoping responses which address our issues relative to the proposed DM&E Railroad Proposal as of July 10, 1998. You will find two sets of responses, one from the Nebraska National Forest and one from the Medicine Bow-Routt National Forest. We consider these comments to be very preliminary in nature and we will continue to provide resource input throughout the analysis process, particularly as the range of alternatives is developed, as appropriate, under the National Environmental Policy Act.

Presently, we are developing a Memorandum of Understanding (MOU) with the U.S. Army Corps of Engineers and the Bureau of Land Management to define our roles with the Surface Transportation Board as cooperating agencies. Cooperating agency status is generally established when there are other federal agencies involved with a proposed action that will make decisions tying to the environmental impact study (EIS) being prepared by a lead agency. In this case, the Surface Transportation Board is the lead agency. Once we have prepared a draft of the MOU, we will send it to you for your review. Hopefully, we can have this agreement concluded shortly.

Should you have any questions, please contact Wendy Schmitzer, Forest Service Project Representative for both the Nebraska and Medicine Bow-Routt National Forests. She can be reached at (307) 358-4690, work; (307) 358-4005 home; or by e-mail at dowendy@coffey.com.



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PROPOSED PROJECT DESCRIPTION SHEET

(For Internal NFMA/NEPA Scoping of Proposed Projects
On the Fall River Ranger District)

06/05/98
Date Initiated

Project Title: DM&E Railroad Expansion into the BGNG

Project proponent(s): DM&E Railroad Corp. and the Surface Transportation Board

This project description sheet is being used to initiate scoping and to assemble comments, concerns and potential issues from district and forest level resource specialists

Project Description:

On February 28, 1998, the Dakota, Minnesota and Eastern Railroad Corp. (DM&E) filed an application with the Surface Transportation Board (STB) for authority to expand its rail transportation facilities into east-central Wyoming. The proposal involves constructing or rebuilding 897 miles of rail track and associated infrastructure between Winona, Minnesota and the TBNG. An estimated 40 miles of new track construction would occur in a four chain (266' more or less) right-of-way on grasslands in S.D. and WY. that are administered by the USFS, including BGNG, under DM&E's preferred route. At this distance and width, a total of nearly 1,300 acres of NFS grasslands could be involved in the two states. The PURPOSE of this action is to develop rail access between eleven coal mines on TBNG that are located between Bill and Gillette, WY., and existing and future coal markets in the mid-west. The NEED, as described by DM&E in its proposal and application, is for an alternative choice for coal transportation out of TBNG beyond what currently exists, and a more direct, and so quicker and cheaper, option for coal delivery to customers in the market area that would be served. Such development would augment and add significantly to DM&E's services, marketing and revenue generating capabilities. DM&E describes that delivery times to markets in the northern mid-west could be reduced by 75 percent, and average rail car "turn-a-round" time by more than 50 percent.

The STB is the "lead agency" for this process. The FS is a "cooperating agency". The proposal represents a significant federal action. An EIS will be prepared. Burns & McDonnell, Consulting Engineers, KC, Missouri, is the third party consultant to the STB for the preparation of the EIS. Public scoping to surface concerns and potential issues has begun. The period for identifying concerns, potential issues, information needs, etc., i.e. the public scoping period, ends on 07/10/98. All comments must be received by the STB on that date. That includes FS comments as to concerns and potential issues.

What we need from you now is your comments, etc. as to 1) your concerns and/or the potential issues you see for your resource area as regards the proposal, and 2) the information that is available or that may need to be available in order to respond to, and answer those concerns/issues. You do not have a lot of time between now and 7/1 to gather information or go to the field to gather data, or to learn more. Your responses at this point need to be based on your current knowledge and

INTERDISCIPLINARY COORDINATION ROUTING SHEET

Route the project description and this coordination sheet to all resources that would be affected by the proposed project.

ROUTE TO:

- Cultural Resources
- Engineering
- Recreation/Visual Quality
- Water/Soils/Air
- Fire Management/Fuels
- Lands/Minerals/Oil & Gas
- Land Adjustments and ROW
- Range
- Wildlife/Fisheries

IT IS VERY IMPORTANT FOR THE RESOURCE SPECIALISTS WHO PROVIDE INPUT TO THIS NFMA/NEPA SCOPING TO:

- **1. Document their concerns and potential issues. Be as site-specific as you can. (NOTE: if there will be no impact, rather than leaving blank you need to write "no impact" or "no adverse effects expected" and sign).
- 2. If applicable, identify the need for further information or coordination.
- 4. SIGN and DATE your comments.

expertise, and what info/data you do have available. Be as specific as you can about your concern. Be site specific if you have it. If not, at least get your concern or the general issue out on the table so that the EIS contractor can be thinking about and planning for how they will get the info needed, and what they will do with/about your concern as it relates to significant issue identification and alternative development. Maps that show DM&E's preferred (southern) route, and other routes that they considered previously are available at the Fall River District. Use them! If you need help to put your thoughts or concerns into a format that we can use to communicate same to the STB, Mike Erk or Jerry Schumacher can help you write your concerns/issues in a way that will be useful to the EIS contractor and that will get your point across in a clear and concise way. Don't worry about suggesting mitigation measures or requirements for monitoring at this point in time. Just tell them your concerns. It will be up to the EIS contractor to talk with us, investigate and research, and then come up with good, solid and do-able ways to mitigate, and any related monitoring that is appropriate, and that we can approve and adopt. Good Luck!

Project Objectives: see project description narrative, above

Expected Timing: Please submit your comments, concerns and/or potential issues to Mike Erk in writing by July 1, 1998. He will assemble your responses and forward same to the TBNG before the end of the scoping comment period when all comments will be forwarded to the STB.

Project Location:

Legal Description: On BGNG, the preferred route enters the Buffalo Gap NG at State Highway 44 and the Cheyenne River (T2S, R12E). The route proceeds south and west along the Cheyenne River to the mouth of Spring Creek. It then proceeds up Spring Creek, south out across Phiney Flats (T3S, R11E.) and drops back into the Cheyenne River about 1 mile north of Battle Creek. It proceeds south and west along the Cheyenne River until it exits the BGNG at Cottonwood Creek (Section 6, T6S, R9E). The preferred route will cross approximately 14 miles of BGNG.

Forest Plan Management Areas: Specifically, 4G, 6B and 9A. It also will cross the Red Shirt and Cheyenne River RARE II areas.

(Attach any maps and any other descriptive information available)

CULTURAL RESOURCES: impact(s) to cultural resources; has the area been inventoried; probability of finding sites; location of known sites, and can these sites be protected (attach site map if applicable)

PALEONTOLOGY

The area contains paleontological sites that have already been inventoried. Certain geologic formations within the alternative and proposed routes have a high probability to contain fossils. Concern is will this resource be impacted and/or lost.

ARCHEOLOGY

Concern is that known and unknown sites not be disturbed without prior evaluation under the law.

NATIVE AMERICAN SACRED SITES

Federal lands are to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners. The concern is that the railroad avoid adversely affecting the physical integrity of such sacred sites.

S/ Michael L. Erk
Signature

June 30, 1998
Date

ENGINEERING - roads, trails, other facilities, etc.

FLOODPLAIN

The Cheyenne River is classified as a Zone A 100 year flood potential. The concern is the affect the railbed may have on changing potential high water marks during flood occurrences.

STEEP UNSTABLE SLOPES

Concern is some proposed railbed locations are on very steep (>60%) shale embankments next to the Cheyenne River. Cutting action from the river and the sluffing potential of the shales combine to make very unstable conditions.

HIGHWAY 44

Highway 44 crosses the National Grassland and the Cheyenne River north of the Indian village of Red Shirt. This required a considerably large berm to accomplish. Concern is how the DM&E proposes to place a railroad across or under the highway.

PUBLIC SAFETY

Concern is for the Public's safety at many of the remote crossing that will occur along the route. These crossings should contain sufficient signage and warnings to prevent accidents at any of the remote crossings. In addition, the ROW will need to be fenced and signed to prevent the Public from entering the ROW.

/s/ Michael L. Erk June 30, 1998
Signature Date

WATER/SOILS/AIR: impacts to soils, water quality, water quantity, air.

WETLANDS

The area along the Cheyenne River contains three wetlands types. In general terms these would be described as the Cheyenne River channel, its' floodplain, and small ephemeral tributaries of the Cheyenne River. The concern is that these wetlands not be lost or diminished.

RIPARIAN

Concern is that hydric vegetation associated with river channels along the Cheyenne River floodplain and its tributaries will be destroyed. Another concern is that the Cheyenne River and tributaries are designated as warm water semi permanent fish life propagation waters, and what effects will rail beds have on destruction of this habitat.

AIR

Concern is the affect that diesel engine emissions will have on the air quality of the Badlands National Park Class I airshed.

/s/ Michael L. Erk June 30, 1998
Signature Date

(A) The 1996 305(b) Water Quality Assessment for South Dakota lists the Cheyenne River Basin as impaired, mainly due to total suspended solids and total dissolved solids. Any construction along the Cheyenne River would have to include erosion control measures to assure activities are not adding to the existing silt loading.

(B) Executive Order #11987 instructs the Executive Branch of government to..."Restrict introduction of exotic species into the natural ecosystems..." As a result, native species will be required for any reclamation and erosion control. Species used will need to be approved by the Forest Service. Treatment for noxious weeds will also be required.

(C) Ddue to small amount of top soil in region, top soil will be required to be stock piled and respread for re-vegetation.

/s/ Robert Novotny June 10, 1998

RECREATION/VISUAL QUALITY: current condition, desired condition, effects, impacts, information needs, possible management practices, possible opportunities available
RECREATIONAL OPPORTUNITY SPECTRUM

The concern is the affect or change that rails and access roads will have on current recreational opportunities.

LANDSCAPE AESTHETICS (VQO'S) - VIRTUAL QUALITY OBJECTIVES

The concern is the affects a railroad may have on the scenic attractiveness of the pristine landscapes along the Cheyenne River and National Grasslands.

SCENIC DESIGNATION - CHEYENNE RIVER

The Cheyenne River is eligible and meets the criteria to be classified as a scenic river under the Wild and Scenic River Act. The concern is the affect a railroad would have on this eligibility.

RARE II (CHEYENNE RIVER & REDSHIRT)

Concern is that Roadless Area Review Evaluations (RARE II) as listed in previous executive order be properly evaluated under the regulations (36 CFR 219.17) and considered as potential wilderness areas.

/s/ Michael L. Erk June 30, 1998
Signature Date

Since the proposed route will cross both Red Shirt and Cheyenne River RARE II areas, an evaluation for potential wilderness will need to be done for both of these areas prior to making a final decision. The procedure to follow for this evaluation is located in FSH 1909.12 Chapter 7, sections 7.22, 7.23, 7.25 and Chapter 4 section 4.19c.

If the route is within a 1/4 mile of the Cheyenne River in T4S, R10E sections 25, 26, and 27 or T4S, R11E sections 21, 28, 31, and 32, it is crossing into an eligible wild and scenic river corridor. The river has been classified as Scenic along that stretch. Until a suitability study on the river is done, no actions can take place that would cause the river to lose its eligibility for inclusion into the National Wild and Scenic River System at the Scenic classification. The standards for Scenic Rivers can be found in FSH 1909.12 Chapter 8 section 8.2.

If the railroad proposal could change the classification, a full suitability study would have to been done. The requirements for this study can also be found in FSH 1909.12 Chapter 8 sections 8.23, 8.3, 8.31, and 8.33(all of the subheadings also)

The ROS classification for the area the proposed route will travel is Roaded Natural except for the two RARE II areas which are Semi-primitive Motorized.

The scenery management scenic classes, existing scenic integrity, concern levels will have to be addressed. This information will be available from GIS generated maps within a week or two. Right now according to the current plan, projects cannot exceed a VQO of Partial Retention in MA 9A and Modification in MA 4G and 6B.

How far with the route be from French Creek picnic ground? Will it have any impacts on users of the site, such as noise or visually?

/s/ Liz Ohrogge June 5, 1998

FIRE MGMT/FUELS: impact on fuel loadings and fire danger, need for any fuel treatments, fuels prescriptions, smoke sensitivity

FIRE

Concern is the increased wildfire risk along the rail route. (ie: accumulated coal dust, vegetation, sparks/ignition.)

/s/ Michael L. Erk June 30, 1998
Signature Date

LANDS/MINERALS/OIL&GAS: impacts to lands, minerals, or oil and gas, special uses

ACCESS TO NFS LANDS

There are two concerns: First, concern is that fragmented pieces of NFS lands remain open to the public. Second is the amount of access DM&E will need for rail maintenance under their Operating Plans outside of the ROW.

PERMITS FOR LAND USE OFF ROW

Concern is additional amount of time required by Forest Service to administer special use permits necessary to authorize other land uses required by DM&E. (ie: access roads for rail line maintenance.)

/s/ Michael L. Erk June 30, 1998
Signature Date

LAND ADJUSTMENT AND ROW: impacts to land exchanges and ROWs planned or in progress

ACCESS TO NFS LANDS

There are two concerns: First, concern is that fragmented pieces of NFS lands remain open to the public. Second is the amount of access DM&E will need for rail maintenance under their Operating Plans outside of the ROW.

PERMITS FOR LAND USE OFF ROW

Concern is additional amount of time required by Forest Service to administer special use permits necessary to authorize other land uses required by DM&E. (ie: access roads for rail line maintenance.)

/s/ Michael L. Erk June 30, 1998
Signature Date

RANGE: impacts to range resource, allotments impacted/permittees that need to be contacted, range improvements, attach map of range improvements if applicable; any concerns with noxious weeds, necessary mitigation

FRAGMENTATION OF PASTURES

Concern is that 16 pastures will be cut into separate sections by the railroad. Some sections will be too small to be grazed. Some sections may have water cut-off. Eight allotments will be affected and require new allotment management plans.

WOODED DRAWS

Concern is that deciduous trees along the Cheyenne River and its' tributaries will be destroyed.

RANGE IMPROVEMENTS

Concern is that range developments such as fence, pipelines and wells will be destroyed.

NOXIOUS WEEDS

The Forest Service, state of South Dakota, and local individuals have increased efforts to keep Leafy Spurge (and other noxious weeds) under control and to stop the spread of spurge. The concern is that the railroad will increase the spread of noxious weeds, especially Leafy Spurge, to all areas along the proposed routes, with no responsibility to eliminate these weeds when they first occur.

/s/ Michael L. Erk June 30, 1998
Signature Date

The Hay Canyon Alternate route would possibly cross the north quarter corner of Section 29, T8S, R8E, BHM. Even if this route does not cross the federal land on the E1/2 of Section 29, it indirectly affects the Sand Creek Allotment pasture, separating some private land within the pasture from the allotment. In addition, the route will cross a water pipeline which provides water for the whole Sand Creek Allotment. The crossing of the pipeline will separate the private lands and the west from existing watering facilities.

/s/ Robert Novotny June 10, 1998

WILDLIFE/FISHERIES: T, E & sensitive species, habitats, possible/potential impacts

WILDLIFE HABITATS/THREATENED, ENDANGERED AND SENSITIVE (TE&S) SPECIES

A variety of wildlife species are common to the area and include mule deer, sharp-tailed grouse, badger, prairie dog, coyotes and cottontails. The concern is the fragmentation or destruction of habitat, migration corridors, road kills, and/or noise that may occur. Of specific concern is any impact to TE&S species.

/s/ Michael L. Erk June 30, 1998
Signature Date

TO: Ms. Wendy Schmitzer, DM&E Coordinator
TOPIC: Land Uses and Minerals Scoping Comments

Wendy,

Here is my input on the proposed DM&E Railroad. If further clarification is needed or you have questions do not hesitate to contact me.

ISSUE: Access to existing oil and gas facilities.

The proposed routes all cross and will "cut" current access routes used by National Grassland oil and gas producers. DM&E RR needs to do an inventory of wells/facilities whose access route will be affected by the proposed railroad and specifically identify what those impacts are.

Mitigation will be required to provide continued reasonable access to these producing oil and gas wells.

ISSUE: Access across tracts at on grade crossings for oil and gas facilities.

Oil and gas traffic necessary to operate current approved operations on National Forest System (NFS) lands could be delayed considerably at on grade crossings. Typical length of delays, i.e., waiting at on grade crossing for trains to pass by, needs to be considered as to its effect upon existing oil and gas operations.

ISSUE: The proposed railroad crossing existing special use permitted facilities.

All of the proposed routes will cross facilities with existing authorizations from the Forest Service to use NFS lands.

DM&E RR needs to (1) do an inventory of facilities that will be affected by the proposed rail road and (2) specifically identify what those impacts are.

Mitigation will be required to provide continued reasonable use of NFS land by these easement/right-of-way holders.

ISSUE: Affect of the proposed railroad on development of the federal minerals underlying NFS lands.

Facets of this issue are effect on access roads, pipeline routes, electric lines and related facilities necessary to develop the minerals underlying the NFS lands. Minerals to focus on are Coal, Oil, Gas, Bentonite and Uranium.

ISSUE: Fence standards.

The fence standards that will be applied to the right-of-way are always a topic of concern. The proposal needs to clearly identify where fences will be and the fence design. Some facets of the issue are:

* Should the fence be designed to facilitate the easy passage of big game or to prevent big game from entering the right-of-way.

* Are there areas that need not be fenced. For example, where there is a fence, a road, a fence, a railroad and a fence, why not just have a fence on the outside of the road and no fence until the outside of the railroad.

ISSUE: Exclusive use vs. non exclusive use.

Typically Forest Service easements are non exclusive use. That is, the easement only allows the holder to use the specific area for a specific use and the Forest Service will authorize other uses to occur on that same tract of land as long as the various uses are basically compatible.

Must the railroad easement be exclusive use and, if so, why. What uses are compatible needs to be discussed.

ISSUE: Ancillary use areas during and after construction.

Will there be a need for "lay down yards", storage areas, camp areas, administrative sites during or after construction. If so where and what are their impacts.

ISSUE: Access to the right-of-way during and after construction.

Will there be a need for access across NFS land to the railroad right-of-way during and after construction. If so where and what standard road.

ISSUE: Introduction and/or control of noxious weeds.

What measures will be taken to prevent the introduction of and control of noxious weeds during construction and during operation.

ISSUE: Use of Native Species in reclamation.

What plant species are planned to be used on NFS lands and adjacent to NFS lands. What will be the affect of reclamation upon the existing biodiversity. Will exotic be introduced or a change in the basic biodiversity of the area. The concern with seed mixes on lands adjacent to NFS lands is about plants migrating onto NFS lands.

Upon the completion of (1) inventories by the STB NEPA contractor and (2) alternative identification, site specific issues related to the broad issues displayed above will be become apparent. Also other issues may be revealed as the NEPA process is accomplished.


JOSEPH D. REDDICK
Land Uses and Minerals Staff
Douglas Ranger District

To: Wendy Schmitzer
Forest Representative
Re: Comments on DM&E Railroad Proposal
From: Ralph Cockerill, Fire/Timber Staff
July 8, 1998

Issues:

1. If new construction of railroad is approved, will agreements with County organizations for fire control be developed?
2. How will access be provided for fire suppression?
3. What notification mechanism will be used to notify the public and/or affected agencies of fire outbreak?
4. Will fire prevention methods such as plowing and disking be implemented after construction to prevent fires outside of the rights-of-ways?
5. How will private losses due to railroad fires be mitigated, i.e. permittees, etc.?
6. How will coal dust accumulation be handled? Coal dust enhances fire intensity and should be managed.
7. What provisions will be made to allow the crossing of the railroad tracks in the event of fire?

DOCUMENT HEADER

Document name: Range Input Document type: WRD
 Drawer: @ DM&E Railroad Folder: Initial Specialist Commnt
 Received from: George E. Wiggins
 Last modified on Jun 26, 98 4:35 PM by W.SCHMITZER
 Author: George E. Miggin Typist: George E. Miggin
 Filed on: Jul 09, 98 9:40 AM Message attached
 Subject: Specialist Report
 Summary:
 Comments:

RANGELAND SPECIALIST REPORT
DM & E RAILROAD PROPOSAL

Douglas Ranger District
 Thunder Basin National Grassland
 June, 1998

DM & E Railroad has proposed obtaining an easement for construction and operation of a railroad across approximately 24 to 28 miles of Thunder Basin National Grassland. Three route alternatives are identified on the maps that accompany the proposal (see maps w/proposal). Issues, concerns and opportunities discussed in this report are primarily associated with the preferred alternative identified by the proponent. It is highly probable that they also apply to the other two alternatives since they involve the same general area.

Since the precise routes have not been specifically located on the ground, the items discussed in this report will be identified in a somewhat generalized nature. Anticipated rangeland resource issues, concerns and opportunities associated with the National Grassland if the proposal is implemented are as follows:

Anticipated Rangeland Resource Issues/Concerns

The proposed railroad easement will be disruptive to existing livestock grazing pasture rotations which have proven effective in meeting or moving toward desired resource conditions. Livestock grazing operations in approximately 30-35 existing pastures within 21 National Grassland allotments will be impacted with significant changes in grazing strategies and management plans.

- * Approximately 10-15 very small pastures will be created that cannot be managed very effectively or efficiently with livestock. Extensive fencing adjustments and realignments will be necessary to reform pastures into units that can be effectively utilized.
- * Pastures will be created that will either be without water for livestock or will have insufficient reliable water for livestock operations. New water wells, pipelines and/or reservoirs will be needed to allow livestock use of most new pastures that are created by fencing of the railroad right-of-way.
- * Forage available for livestock use will decrease due to loss of use of areas that would be occupied by the railroad right-of-way. It is expected that 1000 to 1200 acres of National Grassland would be precluded from livestock use. Approximately 200-300 National Grassland Animal Unit Months (AUMs) of forage will not be able to be used by livestock.
- * The railroad right-of-way will prevent good distribution of livestock within a few existing and some newly created pastures.
- * Movement of livestock from one pasture to another will not be convenient along the railroad right-of-way. Under and over grade passes will be needed to accommodate livestock movement.

DM&E Railroad Proposal - Rangeland Input pg. 2

- * Increased rangeland fire occurrences can cause a loss of forage (especially winter forage) that livestock operators are highly dependant on to meet livestock feed requirements.
- * Disturbance from railroad construction activities will increase acres and cost of treating noxious weeds on the National Grassland.
- * Rangeland administrative problems and conflicts for land management agencies and public land livestock operators will increase.
- * Some sensitive and highly erosive soils will be disturbed and difficult to revegetate with native plant species. Sediment loads in some drainages will be increased.
- * Operating cost for use of National Grassland by livestock operators will increase as a result of railroad construction and operations.

Anticipated Rangeland Opportunities

- * A few very large pastures will be divided into pastures that can be more intensively managed and/or developed.
- * Through mitigation actions to alleviate loss of water, more dependable water supplies may be possible in some pastures.
- * Some fires caused by railroad activities could help create more desirable forage conditions in the future.

George Wiggins
 Rangeland Management Specialist
 Douglas Ranger District

DOCUMENT HEADER

Document name: Recreation/Engineering Document type: WRD
 Drawer: @ DM&E Railroad Folder: Initial Specialist Commnt
 Received from: Rob Schmitzer
 Last modified on Jul 09, 98 8:33 AM by W.SCHMITZER
 Author: Rob Schmitzer Typist: Rob Schmitzer
 Filed on: Jul 09, 98 9:38 AM Message attached
 Subject: DM&E INPUT
 Summary: Initial issues from REC/ENG/VISUALS.
 Comments:

DM&E RAILROAD PROPOSAL
RECREATION/ROADS/VISUALS ISSUES

DOUGLAS RANGER DISTRICT
MEDICINE BOW/ROUTE NF'S - THUNDER BASIN NATIONAL GRASSLAND

DOCUMENT HEADER

Document name: Timber Input Document type: WRD
Drawer: @ DM&E Railroad Folder: Initial Specialist Comm
Received from: Michael Hood
Last modified on Jun 01,98 7:19 AM by W.SCHMITZER
Author: Reddick/Stenson Typist: W.Stenson
Filed on: Jul 09,98 9:38 AM Message attached
Subject: Project Proposal Internal Scoping Comment form
Summary:
RE: proposed DM&E railline expansion into TBNG
Comments:

The proposed route east of the Rochelle Hills and along Antelope Creek would have a major impact on recreation and a significant impact on the visual resources on the TBNG. This area contains some of the most diverse recreation opportunities, spectacular scenery and feelings of vastness, and a high level of emotional attachment on the TBNG. Basically, the proposed route could not have been selected in a worst location on the TBNG in regards to the recreational and intangible public benefits this area currently provides.

The Land Exchange efforts on this district in the past several years have consolidated almost 30,000 acres in this once fragmented land ownership area to improve public access, enjoyment, and opportunities. Bisecting this area with a railroad will have a major disruption effect on dispersed activities the public is discovering in this area such as: hunting, camping, prairie dog shooting, viewing wildlife and scenery, off highway vehicle (OHV) use, and driving for pleasure. These activities are dependant upon contiguous areas of public lands occurring in a natural setting. This area of the TBNG is rapidly becoming the main area of such public enjoyment.

In response to this potential, the district has begun an aggressive property, road numbering, and directional signing program to better provide public service to those who desire to use this area. The district has also recently begun to develop conceptual plans to develop a wildlife viewing driving loop through this area, and has completed a recreation opportunity brochure with the Converse County Tourism Promotional Board and the Douglas Chamber to better inform the public of access and recreation opportunities within the area.

The visual resources of this area are currently of outstanding quality. Such scenery, expansiveness, and viewsheds existing in a natural grassland setting are extremely rare on public grasslands in this country. The proposed railroad route would have a significant negative impact on this priceless setting.

Another rare, but often overlooked, resource that exists in the area is the lack of unnatural sounds. Whether it be windy or calm, the current setting offers very little to no sounds of mankind. The railroad, with up to 50 trains per day, will destroy the serenity this area provides for those who desire to escape the noise of traffic, machinery, aircraft, construction, and other people caused noises which are so common in everyone's lives.

Rob Schmitzer
Recreation/Engineering Staff Officer
7/9/98

PROPOSED PROJECT DESCRIPTION SHEET

(For Internal NEPA/NEPA Scoping of Proposed Projects
On the Douglas Ranger District)

05/26/98
Date Initiated

Project Title: proposed DM&E Railroad Expansion into the TBNG

Project proponent(s): DM&E Railroad Corp. and the Surface Transportation Board

This project description sheet is being used to initiate scoping and to assemble comments, concerns and potential issues from district and forest level resource specialists.

Project Description:

On February 28, 1998, the Dakota, Minnesota and Eastern Railroad Corp. (DM&E) filed an application with the Surface Transportation Board (STB) for authority to expand its rail transportation facilities into east-central Wyoming. The proposal involves constructing or rebuilding 897 miles of rail track and associated infrastructure between Winona, Minnesota and the TBNG. An estimated 40 miles of new track construction would occur in a four chain (24" more or less) right-of-way on grasslands in S.D. and WY that are administered by the USFS, including TBNG, under DM&E's preferred route. At this distance and width, a total of nearly 1,300 acres of NFS grasslands could be involved in the two states. The purpose of this action is to develop rail access between eleven coal mines on TBNG that are located between Bill and Gillette, WY, and existing and future coal markets in the mid-west. The NEPA, as described by DM&E in its proposal and application, is for an alternative choice for coal transportation out of TBNG beyond what currently exists, and a more direct, and so quicker and cheaper, option for coal delivery to customers in the market area that would be served. Such development would augment and add significantly to DM&E's services, marketing and revenue generating capabilities. DM&E describes that delivery times to markets in the northern mid-west could be reduced by 75 percent, and average rail car "turn-a-round" time by more than 50 percent.

The STB is the "lead agency" for this process. The FS is a "cooperating agency". The proposal represents a significant federal action. An EIS will be prepared. Burns & McDonnell, Consulting Engineers, KC, Missouri, is the third party consultant to the STB for the preparation of the EIS. Public scoping to surface concerns and potential issues has begun. The period for identifying concerns, potential issues, information needs, etc., i.e. the public scoping period, ends on 07/10/98. All comments must be received by the STB on that date. This includes FS comments as to concerns and potential issues.

What we need from you now is your comments, etc. as to 1) your concerns and/or the potential issues you see for your resource area as regards the proposal, and 2) the information that is available or that may need to be available in order to respond to, and answer those concerns/issues. You do not have a lot of time between now and 7/1 to gather information or go to the field to gather data, or to learn more. Your responses at this point need to be based on your current knowledge and expertise, and what info/data you do have available. Be

as specific as you can about your concern. Be site specific if you have it. If not, at least get your concern or the general issue out on the table so that the EIS contractor can be thinking about and planning for how they will get the info needed, and what they will do with/about your concern as it relates to significant issue identification and alternative development. Maps that show DM&E's preferred (southern) route, and other routes that they considered previously are available on top of the map case in Lands & Minerals. Use them! If you need help to put your thoughts or concerns into a format that we can use to communicate same to the STB, Bill can help you write your concerns/issues in a way that will be useful to the EIS contractor and that will get your point across in a clear and concise way. Don't worry about suggesting mitigation measures or requirements for monitoring at this point in time. Just tell them your concerns. It will be up to the EIS contractor to talk with us, investigate and research, and then come up with good, solid and do-able ways to mitigate, and any related monitoring that is appropriate, and that we can approve and adopt. Good luck!

Project Objectives: see project description narrative, above

Expected Timing: Please submit your comments, concerns and/or potential issues to Bill or Joe in writing by July 1, 1998. We will assemble your responses and forward same to the STB before the end of the scoping comment period. I will try to work with you next week to set up a district ID team meeting for the week of 6/15 to discuss your inputs to this scoping phase of the NEPA process.

Project Location:

Legal Description: On TBNG, the preferred route enters Thunder Basin near Morrissey and the Cheyenne River Road (T.41N.R.63W.) The route then proceeds north and west thru townships 41 and 42, and ranges 61-67 to near Little Thunder and Horse creeks east of Darlington School (T.43N.R.67W.) where it splits. One trunk goes south and west to the Antelope and Rochelle mines and near the Rochelle Hills (T.41N.R.70W.), while the other proceeds north and west splitting again into Black Thunder and Jacobs Ranch, and also on north to the several mines that are just to the south of Gillette. (See maps for more info on townships and ranges and specific sections involved.

Forest Plan Management Areas: specifically 4B, 6 and 8A. Also, perhaps 4C, 10A and 10B locally though not identified on Forest Plan map.

(Attach any maps and any other descriptive information available)

INTERDISCIPLINARY COORDINATION ROUTING SHEET

Route the project description and this coordination sheet to all resources that would be affected by the proposed project.

ROUTE TO:

- Cultural Resources
- Engineering
- Recreation/Visual Quality
- Water/Soils
- Fire Management/Fuels
- Forestry/Timber Management
- Lands/Minerals/Oil & Gas
- Land Adjustments and ROW
- Range
- Wildlife/Fisheries
- Environmental Coordination

IT IS VERY IMPORTANT FOR THE RESOURCE SPECIALISTS WHO PROVIDE INPUT TO THIS NFMA/NEPA SCOPING TO:

- ** 1. Document their concerns and potential issues. Be as site-specific as you can. (NOTE: if there will be no impact, rather than leaving blank you need to write "no impact" or "no adverse effects expected" and sign).
- 2. If applicable, identify the need for further information or coordination.
- 4. SIGN and DATE your comments.

DOCUMENT READER

Document name: Wildlife Input Document type: WRD
 Drawer: @ DM&E Railroad Folder: Initial Specialist Comment
 Received from: Timothy W. Byer by W.SCHMITZER
 Last modified on Jun 26, 98 4:00 PM
 Author: Timothy W. Byer Typist: Timothy W. Byer
 Filed on: Jul 09, 98 9:40 AM Message attached
 Subject: DM&E input
 Summary:
 Comments:

FORESTRY/TIMBER MANAGEMENT:

The main concern is that FSM (Forest Service Manual) and FSH (Forest Service Handbook) policy be followed in the event that timber with commercial value is planned to be cut and/or removed, as a result of the ROW clearing operations. Any cutting or subsequent removal of said timber, without FS authorization, will constitute timber theft/crosspass.

Timber with commercial value includes both sawlogs and POL (Products Other than Lumber). On TRNG, the primary tree species is ponderosa pine. A definition of the minimum piece sizes for ponderosa pine can be found in FSH 2409.18. I have summarized this below:

	DBH DOB-inches	Length feet	DIB-inches		Merchantability Factor
			Small	End	
PP Sawlogs (live)	7.0	8	6		10.67
PP Sawlogs (dead)	10.0	16	8		10.67
PP POL	3.5	16	2		variable

If it is anticipated that clearing of timber is going to occur, please involve the District Timber Forester in the project as soon as possible. Depending upon the quantity required to be cut, there may be several options available for cutting, removing and disposing of the timber resource. The District Timber Forester should also be involved in the determination of methods for (BD) brush disposal in the event that timber clearing would occur.

/s/ Nick Hood 5-28-98
 Signature Date

The following are issues/concerns identified in association with impacts to the wildlife resources on Thunder Basin National Grassland. These issues will need to be addressed as a part of the DM&E Railroad EIS.

THREATENED AND ENDANGERED SPECIES

Bald eagles (*Haliaeetus leucorhynchus*) are the only Federally threatened species known to occur on Thunder Basin National Grassland (TRNG). These birds are winter migrants through the area and have been known to use these lands during the winter for hunting and scavenging purposes. There are three nest and winter roost sites within Thunder Basin National Grassland.

Impacts that need to be addressed for bald eagles include:

- 1) Loss of nesting habitat
- 2) Loss of Winter Roost Sites
- 3) Reduction in winter food sources (i.e. prairie dogs)
- 4) Disturbance to existing Winter Roost Sites
- 5) Disturbance/loss of foraging habitat

Peregrine falcons (*Falco peregrinus*) are the only Federally endangered species which could potentially have habitat in the area. Peregrine falcons may occur in the area, but only as migrants. Surveys conducted on TRNG have not identified any peregrine falcon aeries.

Impacts that need to be addressed for peregrine falcons include:

- 1) Reduction in food sources (i.e. prairie dogs)
- 2) Disturbance/loss of foraging habitat

Black-footed ferret (*Mustela nigripes*) habitat also occurs on TRNG. Potential ferret habitat exists in prairie dog towns, and Thunder Basin has been identified as a potential re-introduction site for ferrets. Presently, this habitat is maintained, and managed to provide suitable conditions for the re-introduction of ferrets in the future.

Impacts that need to be addressed for black-footed ferrets include:

- 1) Transmittal of plague to the Cheyenne River prairie dog complex
- 2) Fragmentation of habitat
- 3) Impact to potential re-introduction site
- 4) Increased predator concerns
- 5) Long term noise disturbance

Ute ladies tresses orchid (*Spiranthes diluvialis*) habitat is also available on TRNG. This orchid is listed as Threatened under the Endangered Species Act. It is extremely rare, and occurs in wet meadows, abandoned stream channels, and near perennial creeks that become inundated during large precipitation events. At present, no Ute ladies tresses have been found on TRNG, however populations have been found near the Grassland on both the East and West sides.

Impacts that need to be addressed for black-footed ferrets include:

- 1) Fragmentation of habitat
- 3) Disturbances to potential habitat
- 4) Potential impact to plants

USFS REGION 2 SENSITIVE SPECIES

Additional species of concern which may occur on TRNG are those species that have been identified by Region 2 Regional Foresters as SENSITIVE species. Sensitive wildlife species which may occur within this area include:

For these species impacts that need to be addressed will need to include:

- 1) Loss of nesting habitat
- 2) Disturbance/loss of foraging habitat
- 3) Fragmentation of habitat
- 4) Destruction of habitat
- 5) Reduction in food sources (i.e. prairie dogs)
- 6) Transmittal of plague to the prairie dog complexes
- 7) Increased predator concerns
- 8) Long term noise disturbance
- 9) Threats to population viability
- 10) Threats to populations within the planning area

FISH:

- Flathead chub (*Hypentelium gracilis*): The Flathead chub is common in most drainages east of the Continental Divide. Within the boundaries of TRNG, this species has been collected along perennial reaches of Antelope Creek, Cheyenne River and the Little Powder River. Typically, flathead chub occur in large silty rivers and seldom in ponds or in lakes.
- Plains topminnow (*Fundulus sciadicus*): In Wyoming, the Plains topminnow is found in streams of the North and South Platte drainages, in Niobrara River, and in headwaters of the Cheyenne River system. It usually inhabits clear streams with sand or gravel bottoms and considerable vegetation.

REPTILES AND AMPHIBIANS:

- Northern leopard frog (*Rana pipiens*): The Northern leopard frog is found throughout Wyoming and is relatively common. It is found in, or near, permanent water with associated vegetation. On occasion, this frog will be found near temporary ponds several miles from permanent water. It also is commonly found resting near margins of ponds and lakes. During the summer months, it may be found foraging actively in protected places among sedges, cattails and taller grasses.
- Tiger salamander (*Ambystoma tigrinum*): Tiger salamanders are found throughout Wyoming from the lowest elevations to about 10,000 feet. They require moist environments, seeking out places that provide refuge from the drying influences of sun and wind. Transformed individuals are primarily terrestrial, migrating to ponds and lakes in the spring to breed and remain there through most the summer. Larvae may be found in intermittent streams and stockpools as well as lakes and ponds.
- Milk snake (*Lampropeltis triangulum*): The Milk snake is found under flat stones, decaying logs and stumps, boards or other debris. They may be found in prairie systems, river bottoms (broadleaf woodlands), rocky hillsides and coniferous forests.
- Black Hills red-bellied snake (*Storeria scottorum*): The Black Hills red-bellied snake is found in north eastern Wyoming. Habitat is cottonwood-willow, ponderosa pine and hilly areas. Ranges up to 3000 feet. The red-bellied snake is found under boards, flat stones or loose rocks and in or near margins of wet or open areas. Primarily found in the Upton/Osage portion of TRNG.

- Fox sparrow (*Passerella iliaca*): Fox sparrows are year-round residents on TRNG. They inhabit native riparian shrubs with adjacent coniferous forest or woodland-chaparral. They also are found in burned coniferous and logged/thinned forests, open woodlands, or in willow thickets.
- Black-backed woodpecker (*Picoides arcticus*): This woodpecker is a year-long resident. Habitat is coniferous forests, especially forests that have burned. Nests in cavities of conifers.
- Mountain plover (*Charadrius montanus*): The Mountain plover is a summer resident of shortgrass and midgrass grasslands. They prefer bare ground or grassy areas without shrubs and vegetative height under 4 inches. This species frequents short grass habitats modified by prairie dogs, fire, or heavy grazing and select these areas for nesting. Mountain plovers prefer sites with broad level topography.
- Upland sandpiper (*Bartramia longicauda*): The Upland sandpiper is a summer resident on TRNG. Habitat is upland grassland with few shrubs. Nests in a depression on open ground. Feed in open areas where visibility is good.
- Baird's sparrow (*Ammodramus bairdii*): Baird's sparrow is a summer resident on TRNG. Their habitat is upland grasslands. Ground nester in open prairie.
- Black tern (*Chlidonias niger*): Black tern is a summer resident of TRNG. Black terns inhabit freshwater marshes, wet meadows, marshy lakes. Nests on a floating mat of dead vegetation, often on a muskrat house.
- Lewis' woodpecker (*Melanerpes lewis*): Lewis' woodpecker is a summer resident of TRNG. Habitat is cottonwood riparian areas and open ponderosa-pine or pine-juniper coniferous forests. Both dead and live trees are used for nest sites and as foraging perches. Scattered snags or live trees and brushy undergrowth must be available.

INVERTEBRATES:

- Tawny-crested butterfly (*Phycodes tatesi*): This species appears to be restricted to moist forest borders, particularly in riparian situations, and moist valley bottoms that border riparian woodlands. There is also an association with exposed moist soil in forest situations, as found along shaded trails through clearings. This species primarily uses asters, especially *Aster simplex* and leafy spurge in North Dakota. Populations tend to be colonial, and probably do not range widely (non-migratory). Found in eastern Wyoming's Crook County, Niobrara County, and in native prairies of the Black Hills. Specimens have been collected within the Black Hills.

MANAGEMENT INDICATOR SPECIES (MIS), OTHER WILDLIFE SPECIES AND HABITAT CONSIDERATIONS

Forest Plan Management Indicator Species (MIS) that may occur within the proposed project area include:

Pronghorn antelope	Mule deer	Elk
Bald eagle	Black-footed ferret	Peregrine falcon
Prairie vole	Black-tailed prairie dog	Yellow-breasted chat
Sage grouse	Golden eagle	Brewer's sparrow
Willow flycatcher	Mountain plover	Upland sandpiper
Ferruginous hawk	Red crossbill	House wren

MAMMALS:

- Townsend's Big-eared bat (*Plecotus townsendii*): The Townsend's Big-eared bat occurs throughout Wyoming. Most typical western habitats for this bat are desert shrublands, pinyon-juniper woodlands or dry coniferous forests. Based on historical records, Townsend's Big-eared bat may occur in the Upton-Osage area of TRNG. It is a cave dweller, using caves as day roosts and hibernation sites. Frequently found in abandoned mines. They also commonly use old buildings, but only as night roosts.
- Fringed-tailed myotis (*Myotis thysanodes pahansanensis*): The Fringed-tailed myotis occur as isolated populations in the Black Hills and south to Laramie. May occur on TRNG in Weston County, the Cow Creek and Downs areas. This species generally occurs in middle elevations of grasslands, deserts and woodlands. Roosts in caves, mines, rock crevices and old buildings.
- Swift fox (*Vulpes velox*): The Swift fox is a yearlong resident in upland grasslands habitat of TRNG. Prefers grasslands without shrubs and open areas with loose enough soils for burrowing.

BIRDS:

- American bittern (*Botaurus lentiginosus*): The American bittern is a summer resident, may occasionally occur on TRNG. It inhabits marshes, swamps, reedy lakes, slow moving rivers, moist meadows and dense riparian thickets.
- Western Yellow-billed cuckoo (*Coccyzus americanus*): This bird is found in cottonwood or willow riparian areas.
- Greater Sandhill crane (*Grus canadensis*): This crane is a summer resident. Nesting habitat consists primarily of marshes, wet-moist meadow grasslands and sedge meadows. Optimum habitat is considered to be open areas with shallow water; containing areas of dense vegetation, such as willows, sedges, grasses or rushes.
- Long-billed curlew (*Numenius americanus*): This bird is a summer resident on sagebrush-grasslands. They prefer open areas of shortgrass flats with few shrubs for nesting.
- Ferruginous hawk (*Buteo regalis*): The Ferruginous hawk is a summer resident of TRNG. They nest in rock outcrops, on the ground, in a bank or in trees. On TRNG, most Ferruginous hawks are ground nesters and are found in most areas of the Grasslands.
- White-faced ibis (*Plegadis chihi*): White-faced ibis are uncommon summer residents in wetland areas of the plains. Habitat is almost exclusively ponds, marshes, muddy pools, stream margins and river banks. These areas are used for breeding, feeding and resting. This bird nests in bulrushes or cattails, occasionally on the ground or on an island.
- Common loon (*Gavia immer*): The Common loon is found along rivers or near lakes or ponds with deep water, with vegetation up to the waters edge.
- Merlin (*Falco columbarius*): Merlins are year-round residents which use a variety of habitats. They prefer open areas to hunt and primarily coniferous forests in which to nest. They may also be found in deciduous woodlands along rivers. In winter, they frequent open parkland and prairie habitats containing a few scattered trees.
- Western Burrowing owl (*Athene cucularis*): Burrowing owls are summer residents. They commonly use vacant prairie dog burrows in shortgrass areas and other vacant burrows, such as rabbit or badger holes in upland grassland areas with few shrubs.
- Loggerhead shrike (*Lanius ludovicianus*): Loggerhead shrikes are summer residents in upland sagebrush shrubland/grasslands. They also prefer pine-juniper woodlands. Shrubs and lookout perches adjacent to hunting/feeding areas are important to this species.

Long-billed curlew Red-headed woodpecker Woodhouse's toad

MIS are wildlife species identified in the Forest Plan, used to indicate effects of management activities on plant and animal communities.

The National Grasslands provide crucial habitats for many species. Included in these crucial habitats are crucial winter ranges, elk calving areas, grouse leks, nest sites, roost areas, and rookeries. Impacts to these key areas, as well as how much the project will reduce the habitat effectiveness, carrying capacity (or capability) and population viability must also be addressed.

RIPIARIAN AND WETLANDS

Within the project area there are streams and wet meadows. These areas fall under the management direction involving riparian areas. The Forest Plan states that riparian areas will be managed to "meet water quality standards, provide habitats for viable populations of wildlife and fish, and provide stable stream channels and still water-body shorelines." The Forest plan also allows for management activities within riparian areas "which are not visually evident or are visually subordinate" (pg XII-205 Forest Plan).

The Forest has a "No Net Loss of Wetlands" policy which requires any wetlands that are disturbed or destroyed be mitigated. Mitigation of wetland loss on TRNG needs to be mitigated on National Forest Lands.

This list represents those wildlife associated issues identified during initial scoping. As the analysis process continues, other issues may arise.

DOCUMENT HEADER

Document name: Archy/paleontology Document type: WRD
Drawer: @ DM&E Railroad Folder: Initial Specialist Commnt
Received from: Ian Ritchie
Last modified on Jul 05,98 4:46 PM by W.SCHMITZER
Author: Reddick/Steenson Typist: W.Steenson
Filed on: Jul 09,98 9:39 AM Message attached
Subject: Project Proposal Internal Scoping Comment form
Summary:
RE: proposed DM&E railline expansion into TBNG
Comments:

To W.Schmitzer

From: Ian Ritchie
Postmark: Jul 05,98 4:47 PM
Status: Previously read
Subject: Archy and paleontology comments for DME scoping.

PROPOSED PROJECT DESCRIPTION SHEET

(For Internal NPS/NEPA Scoping of Proposed Projects
On the Douglas Ranger District)

05/26/98
Date Initiated

Project Title: Proposed DM&E Railroad Expansion into the TBNG

Project proponent(s): DM&E Railroad Corp. and the Surface Transportation Board

CULTURAL RESOURCES: impact(s) to cultural resources; has the area been inventoried; probability of finding sites; location of known sites, and can these sites be protected (attach site map if applicable)

concerns:

1. What were the results of the heritage resource inventory for the line? What areas have been inventoried for heritage resources? Which haven't? What are the results of the inventory for the HIS? What are the sites that may be affected by the project? Have the SHDO and ACHP been consulted? Are there properties eligible for the NRHP? Did the Area of Potential Effect (APE) include all areas where borrow or fill may take place outside the line corridor, all areas for staging materials and equipment, all potentially effected downstream areas, all areas potentially effected by increased access provided by the railroad, etc.?
2. Are there linear historic features which will be impacted (cut) by this proposal?
3. Are there historic landscapes (like large open grazing landscapes with relatively few fences) that will be bisected and fragmented by the proposed railline? How were the historic landscapes recorded?
4. Are there Traditional Cultural Properties associated with area tribes that may be impacted by the project?
5. Are there sacred sites (pursuant to executive order 13067) that might be affected by this project and has APPROPRIATE scoping with tribes been carefully undertaken (as spelled out in Executive Order 13084)?
6. Are there potential impacts to archaeological and historic properties in the line corridor?
7. Are some of the largest pastures in the National Grasslands being broken up? How large are the average pastures on the National Grasslands (nationwide)? Our impression is that the TBNG contains some of the largest pastures in the National system and that some of the pastures this project will pass through are very large. How large are the pastures being broken up? Are important cultural and physical landscapes being fragmented by this project? What will be the size of the pastures when they are bisected by the railroad? What will be the remaining large pastures on the National Grasslands? Are these pastures proposed for fragmenting crucial as large pastures for the Nations Grasslands?
8. Potential for changes in stream and waterflow patterns due to track construction and maintenance. Will these changes affect historic properties in the project area and downstream from the project area? Will these changes cause erosion to streamside landscape features that often contain archaeological deposits?
9. How will impacts to any of the resources mentioned above (properties, landscapes, TCPS, sacred sites) be mitigated? What are the timelines for the mitigation? Have all appropriate parties (including tribes) been consulted?

Paleontological Resources: impact(s) to cultural resources; has the area been inventoried; probability of finding sites; location of known sites, and can these sites be protected (attach site map if applicable)

The proposed project will impact known significant fossil resources on the TRNG. Questions needing addressed include:

1. Can such impacts be mitigated?
2. How will such impacts be mitigated?
3. What exact resources will be impacted?
4. What are the scientific and cultural/social values of the resources to be impacted?
5. How will the railroad construction and operation impact the proposed Paleontological Special Interest Area on the TRNG (NGPR proposal)?
6. Pursuant to the Special Interest Area designation, how will the railroad construction and operation impact access for public participation projects? Will the existing road system into the area be useable? Will there be rail crossings provided? Will new ROW easements be provided for the FS and public should the line eliminate existing access? Will new roads be provided to access the area if existing access is eliminated by the railroad?
7. Potential for changes in stream and waterflow patterns due to track construction and maintenance. Will these changes affect paleontological deposits in the project area and downstream from the project area? Fossils are often exposed in these erosional areas. Will these changes cause erosion to streamside landscape features that often contain fossil deposits?
8. How will fossil resources be protected from illegal collection and degradation during railroad construction? From increased access due to railroad operation?
9. There are other areas with potential for significant fossil deposits along the proposed route. What has the paleontological survey for the EIS revealed? Once the survey is completed all the questions above should be answered for those deposits. Survey area should include not just the line but areas downstream potentially affected as well as potential borrow and fill areas.

/s/Jan Ritchie 25 Jun 98
Signature Date



United States Department of the Interior

NATIONAL PARK SERVICE

MIDWEST REGION
1709 JACKSON STREET
FAYETTEVILLE, MISSISSIPPI 38832-2571

IN REPLY REFER TO:
ER-98/0386

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Office of the Secretary

JUL 17 1998

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Public Record

*DM&E
Scoping
Wyoming
letters*



Mr. Vernon Williams
Office of the Secretary
Case Control Unit
STB Finance Docket No. 33407
Surface Transportation Board
1925 K Street, NW
Washington, DC 20243-0001

ATTENTION: Ms. Elaine K. Kaiser, Chief, Section of Environmental Analysis, Environmental Filing

Dear Mr. Williams:

The National Park Service has reviewed the draft scope of study for the Environmental Impact Statement (EIS), Powder River Basin Expansion Project (your finance docket number 33407). This project would include construction and operation of new rail facilities in 11 counties within the States of Wyoming, South Dakota, and Minnesota.

In general, the draft scope of study seems appropriate for a project of this nature. Information available to our office about the potential alternative alignments for the project was limited. Review of macro-scale graphics depicting the alternative alignments suggests that one or more of the possible routes within South Dakota could be near units of the National Park System.

Jewel Cave National Monument, Mount Rushmore National Memorial, and Wind Cave National Park are all located in the Black Hills region. Badlands National Park is located east of the Black Hills in Pennington, Shannon, and Jackson Counties. The EIS should assess any potential impacts of the project on these important park units. Even if alternative alignments are not immediately adjacent to the parks, potential affects on the parks related to impact areas such as noise and aesthetics should be evaluated.

Please note that both Wind Cave and Badlands National Parks are designated as Class I areas under the Clean Air Act. Impacts of rail and construction-related air emissions on these areas should be assessed.

There is a possibility of Congressional action that would result in designation of a new national park area in the region. A national historic site to protect and interpret facilities associated with the Cold War could be established at multiple sites along the Interstate Highway 90 corridor, east of the city of Wall. A bill to accomplish this designation, S. 2284, was introduced in Congress on July 9, 1998. If Congress chooses to create this new area, the EIS also should assess potential impacts on the sites.

This project also could impact sites acquired or developed with Lands and Water Conservation Fund (L&WCF) assistance. Section 6(Z) (3) of the L&WCF Act states:

"No property acquired or developed with assistance under this section shall, without the approval of the Secretary [of the Interior], be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreational properties of a least equal fare market value and of reasonable equivalent usefulness and location."

The number of sites potentially affected by the proposal is too large to permit individual listing in this letter. To best determine what L&WCF sites might be affected, we recommend coordination with the L&WCF State Liaison Officers for the affected states. Those liaison officers are:

Mr. Dennis W. Asmussen
Director, Trails and Waterways Unit
Department of Natural Resources
500 Lafayette Road, Box 51
St. Paul, Minnesota 55155-4052

DAVID MINGE
U.S. DISTRICT COURT
1415 Louisiana Building
Washington, DC 20541
(202) 225-2311



UNITED STATES
HOUSE OF REPRESENTATIVES

July 27, 1998

Mr. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

Re: Finance Docket Number 33407

Dear Mr. Williams:

I am writing today to further expand on my previous comments to the Surface Transportation Board (STB) regarding the expansion of the Dakota, Minnesota and Eastern (DM&E) Railroad.

The expansion and upgrade DM&E has proposed has the potential to bring much needed competition to the agricultural shipping industry in Minnesota. The autumn harvests of the last several years have shown the devastating impact a monopoly can have on producers with only one shipping option. However, it is important to ensure that benefits to local service do not ride roughshod over other community concerns.

The proposed upgrade and expansion of DM&E's current track raises safety concerns for both new and existing road crossings. The requirement of safe, well-marked crossings must always be a paramount consideration. As a good corporate citizen, I feel it is incumbent upon DM&E to ensure that its crossings are adequately marked and equipped with modern safety features.

With the proposed increase of rail traffic DM&E expects on its upgraded tracks, residents, landowners and communities on the line remain concerned about the need for noise mitigation. DM&E should make a reasonable effort to reduce noise through modern technology. The STB must make certain that DM&E has satisfactorily addressed these concerns in its statements.

Finally, any new track or realignment of track that requires additional right-of-way must be carefully balanced against the rights of landowners. Farms, businesses, and homes will be greatly affected by changes in the route. Originally I did not understand that new right-of-way may be required. The reasonable expectations of landowners must be carefully evaluated and when a reasonable balance is struck, full and just compensation paid.

— DISTRICT OFFICE: —

ST. PAUL OFFICE
300 East Fourth Street
St. Paul, MN 55101
(612) 224-4000

ST. LOUIS OFFICE
200 East Fourth Street
St. Louis, MO 63101
(314) 488-4000

ST. CINCINNATI OFFICE
100 East Fourth Street
Cincinnati, OH 45201
(513) 263-4000

COMMITTEE ON AGRICULTURE
General Farm Commodities
Livestock, Poultry and Aquaculture
Cotton and Wool
COMMITTEE ON THE BUDGET

ENVIRONMENTAL
DOCUMENT

RECEIVED
SURFACE TRANSPORTATION
BOARD
AUG 13 1 55 PM '98

My constituents are concerned that a project of such magnitude could have a serious impact on their way of life. Although I expect that DM&E has acted in good faith in its decision making process, the STB must carefully review the impact statements to ensure that any disruption is kept to a minimum and is not disproportional compared to the benefits to the region.

Thank you for your consideration.

Sincerely,
David Minge
DAVID MINGE
Member of Congress

ROY BLUNT
MEMBER OF CONGRESS
7TH DISTRICT, MISSOURI
ROOM 506 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
202-225-1200

Congress of the United States
House of Representatives
Washington, DC 20515

B10
COMMITTEES:
AGRICULTURE
INTERNATIONAL RELATIONS
TRANSPORTATION AND INFRASTRUCTURE
ROY BLUNT
CHIEF OF STAFF
ASST. CHIEF OF STAFF
LEADERSHIP STEERING COMMITTEE

November 5, 1998

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SURFACE TRANSPORTATION
BOARD
NOV 9 4 18 PM '98
CHIEF OF STAFF
LINDA MORGAN

The Honorable Linda Morgan, Chairman
Surface Transportation Board
1925 K Street N.W.
Washington, DC 20423

Dear Chairman Morgan:

I have long been convinced of the necessity of effective rail competition for the economic well-being of our nation. In this regard, I am writing to express my support for the Dakota, Minnesota and Eastern Railroad's application to build a new railroad (Finance Docket No. 33407). This project will provide important services to Missouri electricity producing utilities and electricity consumers. This case provides an opportunity for you to improve rail service in this country. Your timely and positive actions to facilitate this project through the regulatory process would be a positive regulatory effort.

Missouri utilities would greatly benefit from this new service. They and other shippers throughout the country have suffered in recent years due to lack of capacity and system-wide rail service failures, and the regulatory impediments to shared rail access. We need the kind of service improvements made possible by this project. You will help set the tone for this project with a strong decision in November. Please do whatever you can to keep it moving through the regulatory process thereafter. This will be a good opportunity for the STB to demonstrate its effectiveness in fostering a positive rail transportation network in this country.

Thank you for your time and consideration of this request.

Sincere regards,

Roy Blunt
Roy Blunt
Member of Congress

Printed Leaf Number
800-451-1200
with 978-1000

DISTRICT OFFICE

Pat Danner
302 4th St. S.W.
Washington, DC 20540
with 753-1041

CHRISTOPHER S. BOND
MISSOURI
COMMITTEES:
APPROPRIATIONS
SMALL BUSINESS
BUDGET
ENVIRONMENT AND
PUBLIC WORKS

United States Senate
WASHINGTON, DC 20510-2503

B11

November 23, 1998

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NOV 30 12 00 PM '98
CHIEF OF STAFF
LINDA MORGAN

The Honorable Linda J. Morgan
Chairman, Surface Transportation Board
The Mercury Building
1925 K Street, NW
Washington D.C. 20423

Dear Chairman Morgan:

The Dakota, Minnesota & Eastern Railroad's application to build a new railroad will provide important service to Missouri electricity producing utilities and electricity consumers. Your timely and positive actions to facilitate this project through the regulatory process would be a positive regulatory effort.

As you are aware, shippers throughout the country have suffered in recent years due to rail service failures. Missourians need the kind of service improvements made possible by this project. Positive action on this application will aid in demonstrating the Surface Transportation Board's willingness to foster a competitive and first class rail transportation network in this country.

Thank you for your continued efforts. I look forward to your reply.

Sincerely,
Christopher S. Bond
Christopher S. Bond

PAT DANNER
8TH DISTRICT, MISSOURI
COMMITTEE ON TRANSPORTATION
AND INFRASTRUCTURE
SUBCOMMITTEE
SURFACE TRANSPORTATION
BOARD
COMMITTEE ON INTERNATIONAL
RELATIONS
SUBCOMMITTEE
INTERNATIONAL, ECONOMIC POLICY AND TRADE

Congress of the United States
House of Representatives
Washington, DC 20515-2506
December 1, 1998

B12

WASHINGTON OFFICE:
1201 LOMBARD, NW, ROOM 320
WASHINGTON, DC 20515
(202) 225-1041
FAX: (202) 225-8221
DISTRICT OFFICES:
U.S. HIGHWAY DIVISION, ROOM 320
301 SOUTH 8TH STREET
ST. JOSEPH, MO 64501-2240
(816) 233-6812
FAX: (816) 233-8848
9700 NORTH BROADWAY
BOLINGBROOK, IL 60470
KANSAS CITY, MO 64118-2088
(816) 852-2166
FAX: (816) 466-2152

The Honorable Linda Morgan, Chairwoman
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001

Dear Chairman Morgan:

I would like to add my support for the Dakota, Minnesota & Eastern Railroad's (DM&E) application to build a new railroad (Docket No. 33407). This project will provide important service to Missouri electricity producing utilities and electricity consumers—as well as to others who depend on rail shipments.

Missouri utilities would greatly benefit from this new service. They and other shippers throughout the country have been impacted by capacity and other rail service limitations. It is anticipated that the DM&E line would help to address these concerns and, therefore, this application deserves full consideration.

I am hopeful that you will keep these positive aspects of the application in mind as you review this matter. Thank you in advance for your consideration.

Sincerely,

Pat Danner
Pat Danner
Member of Congress

PD/hhm

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CHIEF OF STAFF
LINDA MORGAN



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MAR 23 1999

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ST. PAUL DISTRICT, CORPS OF ENGINEERS
ARMY CORPS OF ENGINEERS CENTRE
160 FIFTH STREET EAST
ST. PAUL, MN 55104-2000



March 17, 1999

Construction-Operations
Regulatory (98-05541-IP-JMO)

Ms. Victoria J. Rutson
Surface Transportation Board
1925 K. Northwest
Washington, D.C. 20423-0001

RE: Final Scope of the DM&E Railroad/Powder River
Basin Proposal Environmental Impact Statement
STB Finance Docket No. 33407

Dear Ms. Rutson:

This letter transmits the St. Paul District Regulatory Branch comments on the final scope of the DM&E Railroad/Powder River Basin Proposal Environmental Impact Statement published in the March 10, 1999, Federal Register.

Page 12, paragraph 1, line 6: Increases in barge traffic in the Winona area as a result of DM&E's proposal will not be evaluated in the EIS.

Comment: In accordance with CEQ guidelines, the applicant should provide a reasonable demonstration that it is improbable that the railroad project would increase barge traffic in the future. The Burns & McDonnell conference call notes for January 19 and 20, 1999, appear to suggest that there is some potential for a 150% increase in tonnage through locks, and enhanced barge loading facilities at Winona.

Page 12, paragraphs 3 and 4: Safety and vibration impacts.

Comment: The EIS should address safety and vibration impacts concerning Army Corps of Engineers flood control projects, including those at Lehillier, Mankato, Rochester and Winona, Minnesota. The Corps of Engineers must approve any work that may affect Federal flood control projects. Mr. Dana Werner in our St. Paul office, (651) 290-5326, can provide further information about Corps projects.

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B12

-2-

Page 21, paragraph 4, line 4: The scope of the analysis will include the following activities....

Comment: Include as an item the proposed construction of new rail mainline to bypass DM&E's existing trackage rights on the CP RR in Rochester, Minnesota.

Page 24, paragraph 2, line 5: The threshold anticipated to apply to this project is eight trains per day on any segment of new rail line.

Comment: We understand that existing train traffic per day in Rochester, Minnesota is three trains per day and that the proposal may have potential to significantly increase traffic. The EIS should address this potential and any need for restrictions to limit adverse effects of train traffic on communities.

Please note that these comments do not address cultural resource issues. We will comment on the cultural resource aspects of the proposal through the project Programmatic Agreement for Cultural Resource Work. At this time, we believe our authority to require archaeological surveys or other investigations may not be limited to the beds and banks of the wetland and waters areas which are under Corps jurisdiction.

Thank you for the opportunity to comment on this proposal. If you have any questions, please contact Ms. Jan M. O'Malley in our La Crosse office at (608) 784-8236. In any correspondence or inquiries, please refer to the Regulatory number shown above.

Sincerely,

Ralph J. Augustin
Chief, Regulatory Branch

Copy furnished:

Mr. Steve Thornhill
Burns and McDonnell
9400 Ward Parkway
P.O. Box 419173
Kansas City, Missouri 64141

Mr. Dana Werner, St. Paul District, Army Corps of Engineers
Mr. Jerry Folkers, Omaha District, Army Corps of Engineers

B14

Office of Federal Land Policy

122 West 25th Street • Herscher Bldg., 3 West • Cheyenne, WY 82002-0600 • 307-777-7331 • 307-777-5400 fax

April 7, 1999

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



ATTN: Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing

Dear Ms. Kaiser:

The Office of Federal Land Policy staff have reviewed the Final Scope of Study for the Environmental Impact Statement on the Dakota, Minnesota & Eastern Railroad Corporation's Proposed Construction into the Powder River Basin. State agencies were also provided a copy for review in accordance with State Clearinghouse procedures. I am enclosing comments from the Department of Environmental Quality which resulted from that review.

The State of Wyoming requests that our comments submitted previously during scoping as well as the information provided to Burns and McDonnell be fully incorporated into the EIS. Copies are enclosed for your convenience. Other than additional maps provided by the Department of Environmental Quality which pertain to new water crossings given the new proposed route, the State has no additional comments at this time.

The new route proposal is a positive change in the plans for this project and we wish to acknowledge that effort. Please feel free to contact Julie Hamilton of my staff should you have questions or require any additional information. Thank you for the opportunity to comment.

Sincerely,

Conrad Lass, Director

CL:jh
Enclosures

ENVIRONMENTAL
DOCUMENT



The State
of Wyoming



Jim Geringer, Governor

Department of Environmental Quality

Herscher Building • 122 West 25th Street • Cheyenne, Wyoming 82002

ADMINISTRATIVE	ABANDONED MINES	AIR QUALITY	INDUSTRIAL SITING	LAND QUALITY	SOLID & HAZ. WASTE	WATER QUALITY
307-777-7758	307-777-6445	307-777-7759	307-777-7549	307-777-7756	307-777-7752	307-777-7781
FAX 777-3610	FAX 777-6462	FAX 777-5616	FAX 777-6937	FAX 777-5864	FAX 777-5973	FAX 777-5973

March 22, 1999

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

Attention: Ms. Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing

RE: Final Scope of Study, for the DM&E Railroad, Alternative C (Modified Proposed Action)

Dear Ms. Kaiser,

Chris Abernathy of the Water Quality Division (WQD) reviewed and commented on the document referenced above.

Projects of this magnitude will result in multiple crossings of wetlands and waterways. The WQD is concerned about the potential short-term impacts to water quality that may result due to construction activities associated with this project, as well as, impacts due to increased sediment transport from the railbeds and associated areas.

Determining exactly which streams will be crossed is difficult with the present information. However, it is safe to assume that streams of various classifications could be encountered. Different quality standards apply to each classification and the contractor(s) doing the work should be aware of all State water quality standards. The contractor(s) should employ any best management practices necessary to insure that these standards are not exceeded.

B-51

March 22, 1999
Page 3

Construction projects such as this require coverage under Wyoming's General Permit for Stormwater Discharges Associated with Construction Activities. Please contact Ms. Barbara Sahl at (307) 777-7570 for information concerning stormwater permits.

I have included a map identifying the classification of the streams and waterways within the proposed project area. I hope this will provide some assistance in determining the water quality impacts, in Wyoming, associated with this project.

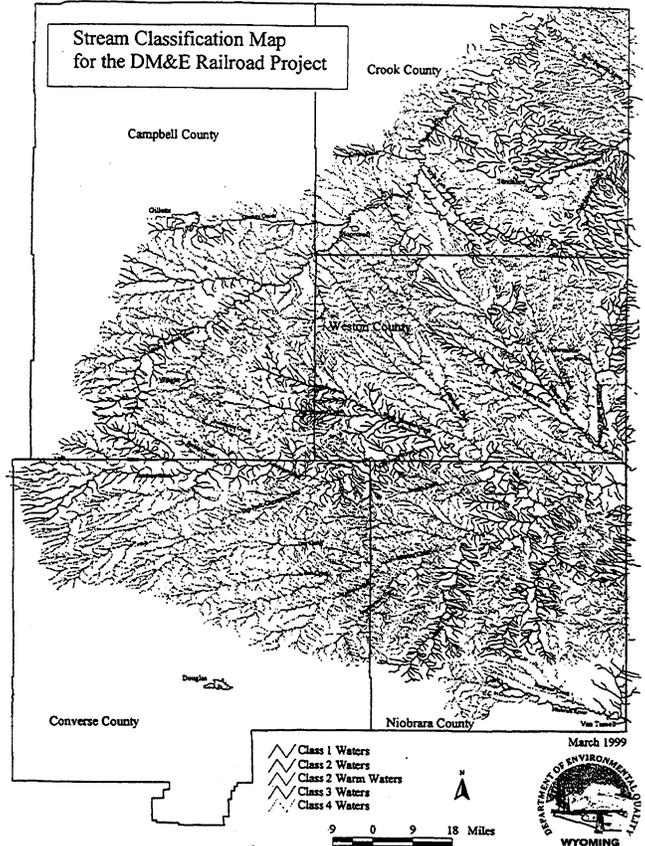
Thank you for the opportunity to comment.

Sincerely,

Dennis Hemmer
Director
Department of Environmental Quality

DH/CA/mad 90651.ltr

cc: Mary Adamy



GIL GUTKNECHT
1ST DISTRICT, MINNESOTA



Congress of the United States
House of Representatives
Washington, DC 20515-2301

April 9, 1999

Ms. Linda J. Morgan, Chairman
Surface Transportation Board
1925 K Street K Street NW
Washington, DC 20423-001

Subject: Environmental Impact Study for the Dakota, Minnesota & Eastern (DM & E) Railroad Project; STB Docket Number 33407.

As you know, the possible environmental impacts of the proposed upgrade of the DM & E Railroad through southern Minnesota, and particularly through or around Rochester, have brought forward many concerns from citizens and community leaders. I believe that as you complete your study, it is important that you have first hand knowledge of the alternatives.

I would like to invite you, and others you may feel appropriate, to visit the region to examine the proposed upgrade route and the bypass alternative. This will allow you to get that first hand perspective. At that same time we can address any other items you may want to cover.

Please let me know when such a visit can be scheduled and appropriate arrangements made.

Sincerely,

Gil Gutknecht
U.S. Representative

ENVIRONMENTAL
DOCUMENT

B15

PAUL D. WELLSTONE
MINNESOTA
Minnesota Toll Free Number:
1-800-461-6041

United States Senate
WASHINGTON, DC 20510-2303

April 9, 1999

Ms. Linda J. Morgan, Chair
Surface Transportation Board
The Mercury Bldg. - 1925 K St. NW
Washington, DC 20423

Dear Ms. Morgan:

I am writing to express my concerns regarding the proposed expansion and upgrading of the Dakota, Minnesota, and Eastern railroad. The proposed upgrade will have significant impact on communities, individual property owners, and environmentally sensitive areas across central and southern Minnesota.

Due to the long lasting effects of this proposed project, I urge that the Environmental Review Phase of this process gives careful and thorough consideration to the many issues that have been brought to the attention of the Surface Transportation Board regarding the DM&E project.

On June 19, 1998, I wrote to the Surface Transportation Board requesting that the concerns of the City of Rochester be carefully noted. The concerns expressed in that letter remain urgent and valid. I have additional concerns about the environmental effects of the proposed Rochester Bypass. Therefore, the study should include an environmental assessment considering the interests of people living along the proposed bypass.

People living in and around Winona, Minnesota are alarmed about the consequences of the proposed staging yards to be built on pristine wildlife habitat and valuable farm land. They are concerned about the effects that increased barge loading activity will have on the Mississippi River.

Mankato and other Minnesota communities also have serious reservations about the impact of this proposal. I urge you to use careful and deliberate study with regard to all interests when determining the EIS implications of this project.

My office will assist the Surface Transportation board in any way possible to insure a just resolution. If necessary, I will be happy to help arrange any further meetings or studies by the Surface Transportation Board regarding this project in Minnesota.

Thank you for your continued attention to this matter.

Sincerely,

Paul David Wellstone
United States Senator

PDW:tam

cc: Elaine K. Kaiser
Chief, Section of Environmental analysis

- Staff Senate Office Building, Washington, DC 20510-2303 (202) 224-6641
- 280 University Avenue, West Court International Building, St. Paul, MN 55114-1025 (612) 648-4022
- Post Office Box 281, 180 So. Avenue, Sovereign, MN 55791 (202) 741-1074
- 417 Lincolnway Avenue, Waukegan, MN 55011 (202) 271-0011

B16

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WASHINGTON OFFICE
425 Cannon House Office Building
Washington, DC 20515-2301
(202) 225-2472
(202) 225-2348 Fax
gil.gutknecht@mail.house.gov
www.house.gov/gutknecht

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HOME OFFICE
Murray Office Plaza
1320 Greenway Drive SW, Suite #1
Rochester, MN 55902
(507) 251-8841
(507) 251-8818 Fax
In MN: 1-800-462-4637 Toll Free

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Committee on Transportation and Infrastructure

Congress of the United States

House of Representatives
Washington, DC 20515

James L. Oberstar
Ranking Democratic Member

April 15, 1999

Bob Hunter
Chairman

Jack Rosenbloom, Chief of Staff
Michael Strauch, Deputy Chief of Staff

David Bernhardt, Democratic Chief of Staff

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

Attention: Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing

Dear Ms. Kaiser:

On March 10, 1999, you issued your Final Scope of Study for the Environmental Impact Statement for the proposed Powder River Basin Expansion Project. You also asked for comments on the proposed south by-pass around the City of Rochester, MN. These comments are in response to that invitation.

I strongly support the overall proposal for the Powder River Basin Expansion Project. As I have stated to the Board before, I believe that having three competitors in a market is better for consumers than having two competitors in a market. I think adding the Dakota, Minnesota & Eastern Railroad to the market for Powder River Basin coal will be good for consumers.

I also support this project because it will add capacity to a rail system that is growing increasingly congested. Maintaining good quality service requires having a rail system with enough capacity and multiple routings that blockages in one part of the system can be relieved by directing shipments over another route.

At the same time, I think any transportation infrastructure project, in any mode, requires a reasonable accommodation of the people who are adversely affected by the project. The DM&E railroad line goes through the heart of Rochester, MN., only two blocks away from the internationally renowned Mayo Clinic, the largest employer in

(202) 225-9446

Room 2165, Rayburn House Office Building

ENVIRONMENTAL DOCUMENT

RECEIVED
SURFACE TRANSPORTATION BOARD
MAY 20 2 03 PM '99
CHIEF OF STAFF
MICHAEL STRAUCH

BILL LUTHER
SIXTH DISTRICT, MINNESOTA
ANOKA, WASHINGTON AND CARLTON, DAKOTA COUNTIES
COMMITTEE ON COMMERCE
SUBCOMMITTEE ON TELECOMMUNICATIONS,
TRADE AND CONSUMER PROTECTION
SUBCOMMITTEE ON FINANCE
AND HAZARDOUS MATERIALS
REGIONAL WMP



Congress of the United States
House of Representatives
Washington, D.C. 20515-2306

May 10, 1999

117 Cannon House Office Building
Washington, D.C. 20515-2306
202 225-2271
Fax: (202) 225-2388
1911 Vine Drive
Suite 110
Woodbury, MN 55125
(612) 733-9888 (4/17/99)
Fax: (612) 733-0087
bill.l@hawaii.rr.com.gov
http://www.house.gov/billluther

Linda Morgan, Chair
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423

Dear Ms. Morgan:

I am writing to express my concerns about the proposed expansion and upgrading of the Dakota, Minnesota and Eastern (DM&E) railroad. The proposed upgrade will have significant impact on communities, property owners and environmentally sensitive areas across central and southern Minnesota.

It is my understanding that many citizens and community leaders have contacted the Surface Transportation Board (STB) about the environmental effects of the Rochester bypass and have requested an environmental assessment which takes into account the interests of citizens living along the corridor. Because of the possible long term effects of the DM&E expansion, I urge that the Environmental Review Phase of this project give careful and thorough consideration to the many issues that have been brought to the attention of the STB.

As you know, people living in southern Minnesota are concerned about the consequences of the proposed staging yards to be built on natural wildlife habitats and valuable farm land. They are also concerned about the effects that increased barge loading activity will have on the Mississippi River.

It is in the best interest of all parties involved to ensure that any disruption caused by the DM&E be kept to a minimum and is not disproportional to the benefits to the region. I urge you to use careful and deliberate study concerning all interests when determining the environmental impacts of the proposed expansion.

Thank you for your continued attention to this matter.

Sincerely,

BILL LUTHER
Member of Congress

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MAY 17 4 20 PM '99
CHIEF OF STAFF
MICHAEL STRAUCH

Congress of the United States

Washington, DC 20515

May 28, 1999

Chairman Linda J. Morgan
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Dear Chairman Morgan:

We are writing concerning the Dakota, Minnesota and Eastern Railroad's application to construct and operate approximately 260 miles of new railroad to ask that consideration of the project move forward. Specifically, we believe that establishing a procedural schedule to bring this case to conclusion would be helpful at this time.

Now that the STB has established the final comment time table for the community bypass issue and completed identification of the substantive issues in the Final Scope of Study for the Environmental Impact Statement (EIS), establishment of an overall schedule for completion of this review would be of great benefit. We request that the STB use the authority granted under the National Environmental Protection Act as the lead environmental agency to develop a schedule for the other milestones in the EIS process. These would include the publication date for the Draft EIS and the Final EIS, and an estimated Record of Decision date. The STB should proceed in a timely and deliberate manner to bring this process to a final conclusion.

We note that many of our constituents have encouraged the development of a schedule. Many affected parties have expressed a compelling need to know when a decision will be made. Fundamental and important planning decisions which they must make await a schedule from the STB. These concerns have been expressed by ranchers, farmers, landowners, elevator operators, communities and others. A decision time line is needed to allow ranchers and farmers time to plan for the growing season and to ensure full utilization of the short construction season.

Clearly, issues remain to be resolved. Any environmental, safety, landowner, homeowner, community or other concerns should be addressed responsibly and not shortchanged, with appropriate mitigation steps required as needed. A thorough and responsible review is essential for all concerned. We fully expect all legitimate issues to be addressed. The project must be developed responsibly, with appropriate sensitivity to all affected parties.

We have heard from many leaders in our state about the importance of this project to South Dakota, and to the entire region. Support for the project has been expressed to us by

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CHIEF OF STAFF
MICHAEL STRAUCH

southern Minnesota. I believe it is clear that having 40 trains per day, each one 135 cars long, would have a serious adverse effect on the ability of the Mayo Clinic to do its work. I therefore urge you to include the proposed south by-pass around the City of Rochester as one of the conditions for your approval of this project. I realize that landowners in Olmstead County oppose the by-pass, but I am convinced that running these trains through a lightly populated rural area makes more sense than running them past a huge employer that depends on peace and quiet to do its work.

I appreciate this opportunity to place these comments on the record.

With all best wishes.

Sincerely,

James L. Oberstar
Ranking Democratic Member

JLO/fwmm



Chairman Linda J. Morgan
May 28, 1999
Page 2

File Code: 1950/2730

Date: February 2, 1999

agricultural organizations, the US Department of Agriculture, the business community, many communities along the DM&E line, and some landowners.

We are concerned that review of this project should not become a victim of unnecessary delays that increase project costs to the point of making it nonviable. Concerns raised should be constructive to the process and point to ways in which disruptions to community and rural life can be realistically and reasonably mitigated.

Again, we would like to urge the STB, as the lead agency, to establish a reasonable schedule to conclude the EIS process in a responsible manner. We are also encouraging the cooperating agencies to join you in that effort, and are enclosing our letters to them for your information.

Thank you for your consideration of these concerns, and please do not hesitate to contact us if we can be of any assistance or if you have questions or comments regarding these issues.

Sincerely,


TOM DASCHLE
US Senate


TIM JOHNSON
US Senate


JOHN THUNE
Member of Congress

Enclosures

Victoria J. Rutson, Attorney
Surface Transportation Board
1925 K. Northwest
Washington, DC 20423-0001

Steve Thornhill
Burns & McDonnell
9400 Ward Parkway
P.O. Box 419173
Kansas City, MO 64141

Bill Carson
Bureau of Land Management
Newcastle Resource Area
1101 Washington Blvd.
Newcastle, WY 82701-2968

Jerry Folkers
U.S. Army Corps of Engineers
P.O. Box 5
Omaha, NB 68101

Mike Hammer
Environmental Protection Agency, Region VIII
8 EPR-EP
999 18th Street, Suite 500
Denver, CO 80202-2466

Re: DM&E Railroad/Powder River Basin Proposal
Environmental Impact Statement Discussion

Dear Fellow Agency Representatives:

On Friday, January 29, 1999, members of our Interdisciplinary Team (I.D. Team) for the DM&E Railroad proposal and I met to discuss the preparation of Chapter 4 for the draft environmental impact statement, following our recent meeting in Denver, Colorado. As you all know, Chapter 4 is the disclosure of the direct, indirect and cumulative effects of the proposed action and alternatives to the proposed action. In the steps leading up to this disclosure and as a part of the NEPA process, we developed criteria for determining what issues would be considered to be "significant" based on the definition of "significance" as defined by 40 CFR 1508.27 as they affect federal lands.



Caring for the Land and Serving People

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Cooperating Agency Letter
DM&E Powder River EIS
Page 2

Based on a list of issues supplied to the U.S. Forest Service generated by the project consultant, Burns & McDonnell, from the letters written to the Surface Transportation Board during scoping, the Forest Service I.D. Team applied the significance criteria and determined what issues would be used in analyzing the impacts of the proposed action and alternatives on federal lands. Additionally, we included our internal issues as well as the issues raised by the public that have communicated directly with the U.S. Forest Service. The following is a draft list of the "significant" issues we determined to be used in predicting the direct, indirect, and cumulative effects analysis. Please note that the "significant issue" is identified with a number of sub-issues associated that will also be taken into consideration:

1. RANCHING

- Fragmentation of grazing allotments
- Isolation of water sources
- Reduced pastures/ allotment sizes
- Increase in fence densities
- Disruption of grazing operations/logistics/access
- Livestock losses/losses of Animal Unit Months (AUM's)
- Decrease in forage
- Increase in permit administration
- Impacts to historical trailing of livestock
- Impacts during construction

2. Native Americans

- Loss of sacred sites
- Loss of characteristics of landscape
- Loss of access to traditional places
- Impact to ceded treaty rights (hunting, fishing, gathering, etc)
- Environmental Justice Act - lifestyle changes
- Protection of archeological/historical finds

3. Recreation

- Fragmentation of openness/vastness
- Degradation to visual quality/aesthetic quality
- Loss of quality of experience
- Industrialization of rural/semi-primitive landscape
- Displacement of recreational activities, i.e. hunting, dispersed recreation
- Disruption of planned/existing interpretative routes
- Noise impacts from engines and whistles
- Impacts to historic Texas Trail or other historic trails
- Impacts to quality of wilderness experience
- Loss of isolation/feelings of solitude
- Impact to prairie dog hunters

Cooperating Agency Letter
DM&E Powder River EIS
Page 3

4. Wildlife

- Threatened, endangered and sensitive species
- Management Indicator Species
- Migratory bird habitats
- Fragmentation of habitats/migration corridors
- Increase in fence densities, fence barriers
- Raptors
- Impacts to elk calving areas
- Impacts to big game, migration routes, critical winter range

5. Ecology/Biodiversity

- Fragmentation of virgin prairie
- Potential barriers to ecotone boundaries
- Not enough data for TES

6. Wetlands

- Executive Order 11988
- Habitat loss, loss of functions and values

7. Noise and Light

- Impacts of whistles, engines and vibrations
- Impacts to quality of life
- Disruption of recreational values, wildlife, and livestock
- Operation impacts vs. construction impacts
- Impacts to wilderness users, native american sacred sites and practices

8. Air Quality

- Increase in Pm10 - construction vs. operation (visibility)
- Proximity to Class I Airsheds
- Increase in NOX
- Order (diesel fumes)

9. Archeology/Paleontology

- Loss of sites
- Loss of data
- Bisection of linear sites (historic trails)
- Change of character of existing route
- Impacts to traditional cultural properties under NHPA
- Impacts to river corridor sites (large concentration of sites)
- Impact to areas of special interest

- 10. Socio/Economics
 - a. Does increase in tax base = increase in land value
 - b. Economic diversification
 - c. Job opportunities
 - d. Demands on social services i.e. hospitals, law enforcement, fire, local government services
 - e. Changes in quality of life, customs and cultures
 - f. Community impacts
- 11. Visual Quality
 - a. Impacts to viewsheds, fragmentation of viewsheds, and increasing viewshed characteristics
 - b. Decreased air quality = decreased visibility
 - c. Night light disturbance
- 12. Wilderness
 - a. Proximity of line to wilderness areas
 - b. Decrease in quality of wilderness experience
 - c. Effects of Pm10, noise and visual impacts on wilderness experience
 - d. Loss of solitude and isolation
- 13. Environmental Justice Act
 - a. Native Americans
 - b. Other origins
- 14. Night Lights
 - a. Loss of feelings of isolation and solitude
 - b. Impacts to wildlife
 - c. Construction vs. operation impacts
 - d. Permanent yardings, signals, crossings, sidings
 - e. Visual impacts

These issues we have identified as "significant" are relevant only to the new construction of the rail line on federal lands for purposes of our impacts assessment. There are many more issues that have been raised that relate to the rebuild of the existing line that are not addressed here because they fall outside of our jurisdiction. However, many of our issues will also be relevant to the rebuild of the existing line. This list of significant issues is being given to each of you for comment and review. Should you have any comments, please make them directly to me at your earliest convenience so I can present them to the I.D. Team for consideration.

Please also note that this list of issues does not include the "old Milwaukee line alternative" at this time as this alternative has not yet been scoped with the public. Should the old Milwaukee line alternative be analyzed in detail, we will apply the same significance criteria to this alternative for issue identification.

Should you have any questions, please feel free to contact me at (307) 358-4690.

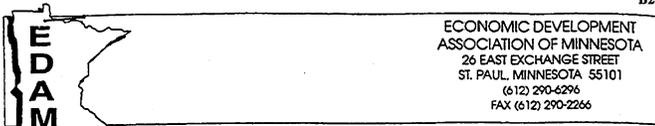
Sincerely,


WENDY SCHMITZER
DM&E Project Coordinator

W.SCHMITZER/ws

- cc: Jerry Schmidt, Forest Supervisor, Medicine Bow-Routt National Forest
Mary Peterson, Forest Supervisor, Nebraska National Forest
Clint Kyhl, District Ranger, Fall River Ranger District, Buffalo Gap National Grasslands
Malcolm Edwards, District Ranger, Douglas Ranger District/Thunder Basin National Grasslands
Wendy Schmitzer, DM&E Project Coordinator, Douglas Ranger District
Lee Kramer, Director, Renewable Resources, Medicine Bow-Routt National Forest
Forest Service I.D. Team members
Jack Palma, Attorney, DM&E Railroad

B21



ECONOMIC DEVELOPMENT
ASSOCIATION OF MINNESOTA
26 EAST EXCHANGE STREET
ST. PAUL, MINNESOTA 55101
(612) 290-6296
FAX (612) 290-2266

November 21, 1997

The Honorable Linda Morgan
Chairman, Surface Transportation Board
12th Street and Constitution Avenue, NW
Washington, DC 20423

RE: Finance Docket Number 33407-Powder River Basin Expansion Project

My name is Douglas R. Ewald. I am Executive Director of the Mid-America Economic Development Council (MAEDC) and the Economic Development Association of Minnesota (EDAM). Both organizations are comprised of economic development professionals in the Midwest.

MAEDC and EDAM support the Dakota, Minnesota and Eastern Railroad (DME) proposal to build a rail line into the Powder River coal basin.

The associated improvements on their existing line that will be done in conjunction with the project will have a profoundly positive impact on business in the communities served by the railroad.

- During the two-year construction period, the DME estimates it will create 2,200 jobs in Minnesota and 3,100 in South Dakota, providing over \$340 million in wages and almost \$40 million in combined state construction related tax revenues.
- Once the railroad is fully operational, they expect to create over 2,000 new ongoing jobs across their system and contribute a combined additional \$24.5 million in state and property taxes.
- The new operation will be exponentially improved from where it is today: Transit times will be drastically reduced, train movements will be controlled by computer and satellite, and cars can be loaded heavier. This all adds to improved viability for businesses shipping with the DME in southern Minnesota and South Dakota.
- Greater Safety. Most importantly for all, the new track will be designed with more crossing signals, heavier rail, and computerized train separation. This should result in fewer derailments, fewer loss and damage claims, and fewer accidents.

Please give the DME application your favorable review and approval.

Sincerely,

Douglas R. Ewald
Executive Director
MAEDC and EDAM

DRE/ni

RECEIVED
 SUBMITTED FOR INFORMATION
 MAY 25 2 05 PM '98
 CHAIRMAN LINDA MORGAN

B22

MINNESOTA PLANNING ENVIRONMENTAL QUALITY BOARD



May 29, 1998

Stephen G. Thornhill, Project Manager
Burns & McDonnell
9400 Ward Parkway
Kansas City, Missouri 64114-3319

RE: DMERR
Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation
Powder River Basin Expansion Project
Request for Human and Natural Resources Information 97-304-4

Dear Mr. Thornhill,

We have received your letter of May 18, 1998 requesting information and assistance relative to your project. Our agency is responsible for administering statewide environmental review rules. As such we assign Responsible Governmental Units (RGUs) to conduct Environmental Assessment Worksheets (EAWs) or EISs, receive completed environmental reviews, process citizen petitions, and serve as a clearinghouse for official notices of availability of documents, public comment periods, and final decisions by RGUs, as required by Minnesota law.

To help you become more familiar with environmental review in Minnesota, we are enclosing a copy of the EQB Environmental Review Program rules and a guidance document, which explains its use. Also enclosed is an example copy of the EQB Monitor in which official notices appear, and a copy of the GIS/LIS newsletter. Please refer to the page of contact information inside the back cover of this newsletter regarding data sets.

The EQB itself is not a repository of information or databases such as you seek, and therefore cannot supply directly the sorts of information requested in your letter. A review of the distribution list to which you have sent your letter indicates that you seem to have included the agencies we would normally recommend that you contact. The most important contacts would likely be Jerry Larson at MnDOT and Paul Hoff at MPCA. It may also be advisable to contact Rebecca Wooden at Minnesota DNR at their central office address, for reviewing environmental matters.

It is likely that MnDOT would be the designated RGU for any environmental review document for your project in Minnesota. They should be the primary agency that you should work with, unless advised by them to do otherwise.

658 Cedar St.
St. Paul, MN 55155
Telephone:
612-296-3985
Facsimile:
612-296-3698
TTY:
800-627-3529
www.mnplan.
state.mn.us

If it is no trouble to you we would be pleased to receive the CD-ROM based information mentioned in your letter, the better to respond to any inquiries which may come to us regarding your project. You may also wish to contact the Land Management Information Center program here at Minnesota Planning regarding the GIS based databases which they are working on in conjunction with DNR and BSWR for the Windows-based EPIC program. Those and other overlays should be directly compatible for you, if they are relevant.

Please contact us with any further questions or comments.

Sincerely,



Jon Larsen, Environmental Review Staff

UNIVERSITY OF MINNESOTA

Twin Cities Campus

Minnesota Geological Survey
Institute of Technology

2642 University Avenue
St. Paul, MN 55114-1057
612-627-4780
Fax: 612-627-4778
E-mail: mgr@gold.umn.edu

June 23, 1998

Mr. Stephen G. Thornhill
Burns and McDonnell
9400 Ward Parkway
Kansas City, Missouri 64114-3319

Dear Mr. Thornhill,

I am writing in regard to the Dakota, Minnesota, and Eastern Railroad Powder River Basin Expansion Project (Finance Docket No. 33407) and the related Environmental Impact Statement. The Minnesota Geological (MGS) is not a regulatory agency and therefore has no information related to permits or approvals required for this project.

MGS does have knowledge of the geologic and hydrologic conditions in the project area. Some parts of the proposed route may overlie carbonate bedrock subject to karst conditions. Karst conditions can include existing sinkholes and the potential for new sinkholes to form. A cursory examination of the Markato and Owatonna areas where new construction is proposed indicates that glacial drift overlying the bedrock is generally greater than 100 feet thick and this may mitigate the potential for sinkhole related problems. However, site specific investigation of these conditions may be warranted.

In the course of rail reconstruction and new construction there is some potential to encounter water wells. There may also be a need to construct new water wells. Well abandonment and well construction can affect ground water quality and for that reason these activities are regulated in the State of Minnesota. The Minnesota Department of Health Well Management Unit regulates these activities. They are located at 121 East Seventh Place, St. Paul, MN 55164-0975, and can be reached by telephone at 612-215-0811.

I would be happy to discuss these matters in more detail if that would be helpful.

Sincerely,



Dale R. Setterholm
Geologist, Assistant to the Director



MINNESOTA HISTORICAL SOCIETY

B24

Contract Historians
1/26/98

June 23, 1998

Stephen G. Thornhill
Burns & McDonnell
9400 Ward Parkway
Kansas City MO 64114-3319

RE: Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation
Powder River Basin Expansion Project
Multiple Counties, Minnesota
SHPO Number: 98-2893

Dear Mr. Thornhill,

Thank you for the opportunity to review and comment on the above project. It has been reviewed pursuant to the responsibilities given the State Historic Preservation Officer by the National Historic Preservation Act of 1966 and the Procedures of the Advisory Council on Historic Preservation (36CFR800).

We believe that there is a good probability that significant historic and/or archaeological properties may be present in the portion of the project area in Blue Earth County. Therefore, we recommend that a cultural resources survey of this area be completed. The survey should address both historic and archaeological properties. The survey must meet the requirements of the Secretary of the Interior's Standards for Identification and Evaluation, and should include an evaluation of National Register eligibility for any properties which are identified. For your information, we have enclosed a list of consultants who have expressed an interest in undertaking such surveys.

If the project area can be documented as previously disturbed or previously surveyed, we will re-evaluate the need for survey. Previously disturbed areas are those where the naturally occurring post-glacial soils and sediments have been recently removed. Any previous survey work must meet contemporary standards.

If you have any questions on our review of this project, please contact me at 612-296-5462.

Sincerely,



Dennis A. Gimmestad
Government Programs and Compliance Officer

Enclosure: List of Consultants

This listing is comprised of individuals and firms who have expressed an interest in undertaking contracts for cultural resource work in the State of Minnesota. It is provided for information purposes to those who may require the services of a historical consultant. Inclusion on the list does not constitute an endorsement of the consultant's professional qualifications or past performance. The SHPO reserves the right to reject contract reports if the principal investigator or other contract personnel do not meet certain minimal qualifications such as the Secretary of the Interior's professional qualifications standards (Federal Register 9/29/83).

It is recommended that work references be checked and multiple bids be obtained before initiating a contractual agreement. The SHPO will not recommend specific contractors, but may be able to comment on previous work reviewed pursuant to state and federal standards and guidelines. [The SHPO has a file containing the vitae of principal investigators.] The SHPO can be contacted at the Minnesota Historical Society History Center, 345 Kellogg Blvd. W., St. Paul, MN 55102 (612) 296-5434.

David C. Anderson, Ph.D.
169 Lundy Bridge Drive
Waukon, IA 52172
(319) 382-3079

BRW Inc.
Jacqueline Sluss & Sigrid Arnot
Thresher Square
700 Third Street So.
Minneapolis, MN 55415
(612) 370-0700

Rolf T. Anderson
212 W. 36th Street
Minneapolis, MN 55408
(612) 824-7807

Michael J. Burns, Architects
639 Center Avenue
Moorhead, MN 56560
(218) 233-6620

Archaeology Department
Minnesota Historical Society
Fort Snelling History Center
St. Paul, MN 55111
(612) 726-1171

Commonwealth Cultural Resources
Group Inc.
2530 Spring Arbor Road
Jackson, MI 49203-3602
(517) 788-3550
Fax (517) 788-6594

Athena Research Consultants Ltd.
415 Main Street, Suite 220
Rochester, MI 48307
Phone (248) 608-6620
FAX (248) 608-0875

Cultural Resource Historians
1607 Dogwood Court
Fort Collins, CO 80525
(303) 493-5270

Andrew Baugnet
Photographer
2445 34th Avenue South
Minneapolis, MN 55406
(612) 729-1278

Michelle L. Dennis
2691 Jackson Street
Eugene, OR 97405
(503) 343-6652

Donivan Research
Scott D. McGinnis
4330 Hemlock Lane North
Plymouth, MN 55442
(612) 551-0510

Edith A. Dunn
Archaeometry Laboratory
College of Science and Engineering
University of MN-Duluth
10 University Drive
Duluth, MN 55812-2496
Phone (218) 726-7957
Fax (218) 726-6979

Jane Eiseley
3433 Richard Street
Madison, WI 53714
Phone (608) 249-8818

Donald Empson
1206 N. Second Street
Stillwater, MN 55082
(612) 351-0172

Chris Faust
255 E. Kellogg
No. 401
St. Paul, MN 55101
(612) 228-1256

John D. Feinberg
Community Services Collaborative (CSC)
1002 Walnut Street, Suite 201
Boulder, CO 80302
Phone (303) 442-3601
Fax (303) 449-3666

Robert M. Frame III, Ph.D.
178 Goodrich
St. Paul, MN 55102
(612) 291-7882 H.
(612) 227-9531 O.

Martha Frey
Historic Preservation Consultant
2445 34th Avenue South
Minneapolis, MN 55406
Phone (612) 729-3407
Fax (612) 729-4910

Patrick Nunnally
2001 Sargent Avenue
St. Paul, MN 55105
(612) 698-2727

Oertel Architects
Jeffrey Oertel
1406 West Lake Street
Suite 201
Minneapolis, MN 55408
(612) 825-6613

Marcia Ohlhausen
3909 Aldrich Ave. So.
Apt. #6
Minneapolis, MN 55409
(612) 824-6411

PHR Associates-Historical
Research & Environmental
Consultants
Rebecca Conrad, Ph.D.
275 Crescent Park Drive-
Box 717
Lake View, IA 51450

(Ms.) Garneth Peterson
2148 Larry Ho Drive
St. Paul, MN 55119
(612) 735-3520

B. Wayne Quist
228 S. 2nd Street
LeSueur, MN 56058

Chris Rediehs
2083 Dudley Avenue
St. Paul, MN 55108-1415

Rivercrest Associates, Inc.
Barbara Henning
203 No. 13th Street
Petersburg, IL 62675
Phone (217) 632-2614
Fax (217) 632-2789

Susan Granger and Scott Kelly
Gemini Research
15 East 9th Street
Morris, MN 56267
(320) 589-3846

Greater Visions
Commercial Photography and
Literature
P.O. Box 160, 320 Washburn
Belgrade, MN 56312
(612) 278-3200

Hardlines
Donald Durst
4620 Indianola Avenue
#205
Columbus, OH 43214
(614) 784-8733

Henry & Henry
Preservation & Architectural Consultants
11850 Eden Trail
Eagle, MI 48822
(517) 626-2412

Heritage Research, Ltd.
John N. Vogel, Ph.D.
N89 W16785 Appleton Avenue
Menomonee Falls, WI 53051
Phone(414) 251-7792
Fax (414) 251-3776

Hess, Roise and Company
Jeffrey A. Hess/Charlene K. Roise,
Historical and
Preservation Consultants
The Foster House
100 North First Street
Minneapolis, MN 55401
Phone (612) 338-1987
Fax (612) 338-2668

Historic Preservation Associates
Timothy C. Klinger
P.O. Box 1064
Fayetteville, AR 72702
Phone (501) 442-3779
Fax (501) 582-3779

Norene Roberts, Ph.D.
and Joe Roberts, Ph.D.
Historical Research, Inc.
P.O. Box 312
Goshen, MA 01032-0312
Phone (413) 296-4758

Shawn P. Rounds
445 North Wheeler Street
St. Paul, MN 55104-3622
(612) 603-7184

Farid J. Sabonji, M.Arch, ASID
4555 Erin Drive, Suite 120
Eagan, MN 55122
(612) 452-5872

Tellus Consultant's Inc.
Dan Hoisington or
Rajive A. Das
1315 Glenwood Avenue No.
Minneapolis, MN 55405
(612) 374-1422

The 106 Group Limited
The Dacotah Building
370 Selby Avenue
St. Paul, MN 55102
Phone (612) 290-0977
Fax (612) 290-0979

Thomason & Associates
Preservation Planners
P.O. Box 121225
Nashville, TN 37212
(615) 383-0227

Christine Taylor Thompson
P.O. Box 337
Windom, MN 56101
(507) 831-5729

Tracerics
5420 Western Avenue
Chevy Chase, MD 20815
(301) 656-5283

Carmen Tschofen
2667 Parkview Boulevard
Robbinstable, MN 55422
(612) 522-5709

Hoisington Preservation Consultants
P.O. Box 13790
Roseville, MN 55113
(612) 791-7397

IMA Consulting, Inc.
John P. McCarthy
2635 4th Street SE
Minneapolis, MN 55414
Phone (612) 627-0315
Fax (612) 623-0177

James E. Jacobsen
4215 Northwest Drive
Des Moines, IA 50310
(515) 274-3625

Liz Holum Johnson
3949 E. Co. Line Rd.
White Bear Lake, MN 55110
(612) 647-3673

Deborah Morse-Kahn
4314 Linden Hills Boulevard
Minneapolis, MN 55410
Phone (612) 925-0749
Fax (612) 823-2387

Kane and Johnson Architects, Inc.
2460 Highway 63 No.
Suite 100
Rochester, MN 55906
Phone (507) 288-1830
Fax (507) 288-1830

Todd Kapler
3257 Virginia Street
Sioux City, IA 51104-2725

Debra Kellner
2729 South Lake Avenue
Duluth, Minnesota 55802
(218) 727-3707

Barbara Kooiman
Mississippi Valley Archaeology Center
at the University of Wisconsin-LaCrosse
1725 State Street
LaCrosse, WI 54601
(608) 785-6783

U.S. West Research
Historical Consultants
Dr. Tony Godfrey
8 East Broadway Suite 601
Salt Lake City, UT 84111

Richard Vidutis
7416 Piney Branch Road
Takoma Park, MD 20912
(301) 588-8559

Robert C. Vogel & Associates
Bear Creek Archeology, Inc.
Archeological & Historical
Consultants, 216 Cleveland Ave. SW
New Brighton, MN 55112-3508
Phone (612) 604-0175
Fax (612) 604-0250

West Central Environmental Consultants
14 Green River Road
P.O. Box 594
Morris, MN 56267-0594
Phone (612) 589-2039 or
1-800-422-8356
Fax (612) 589-2814

Mike Whye (Photographer)
157 Norton
Council Bluffs, IA 51503
(712) 322-6827

Royce A. Yeater, A.I.A.
Yeater Hennings Ruff Schultz
Rokke Architects, Inc.
P.O. Box 818
Moorhead, MN 56560
(218) 233-4422

Thomas R. Zahn & Assoc., Inc., Historical
Design, Research & Preservation
Consultants
The University Club
420 Summit Avenue
St. Paul, MN 55102
(612) 221-9765

Camille Kudzia
5208-39th Avenue South
Minneapolis, MN 55417
(612) 724-7657

Paul Larson
641 Asbury Street
St. Paul, MN 55104
(612) 644-3179

Loucks & Associates Inc.
ATTN: Teresa Halloran
7200 Hemlock Lane, Suite 300
Maple Grove, MN 55369
Phone (612) 424-5505
Fax (612) 424-5822

Kenneth Martin
3801 Garfield Ave. So. #10
Minneapolis, MN 55409
(612) 647-7127

Paul Maravelas
15155 County Rd. 32
Mayer, MN 55360
(612) 657-2237

Steve C. Martens
Assistant Professor
North Dakota State University
P.O. Box 5244
Fargo, ND 58105
Phone (701) 237-7387
Fax (701) 237-7342

Jerry Mathiason Photography
2525 East Franklin Avenue
Minneapolis, MN 55406
(612) 338-8132

Mead & Hunt
221 North 3rd Street
Suite 103
LaCrescent, MN 55943
Phone (507) 895-7170
Fax (507) 895-7171

Barbara Ann Milkovich
6032 Dundee Drive
Huntington Beach, CA 92647-2408
(714) 897-9766

Carole Zellie
Landscape Research Inc.
Research/Planning/Public Education
1466 Hythe St.
St. Paul, MN 55108
(612) 641-1230

MINNESOTA CONTRACT ARCHAEOLOGISTS

Updated by SHPO 2/23/98

THIS LISTING IS COMPRISED OF INDIVIDUALS AND FIRMS WHO HAVE EXPRESSED AN INTEREST IN UNDERTAKING CONTRACT ARCHAEOLOGY IN THE STATE OF MINNESOTA. IT IS PROVIDED FOR INFORMATION PURPOSES TO THOSE WHO MAY REQUIRE THE SERVICES OF AN ARCHAEOLOGICAL CONSULTANT. INCLUSION ON THE LIST DOES NOT CONSTITUTE AN ENDORSEMENT OF THE CONSULTANT'S PROFESSIONAL QUALIFICATIONS OR PAST PERFORMANCE. THE SHPO RESERVES THE RIGHT TO REJECT CONTRACT REPORTS IF THE PRINCIPAL INVESTIGATOR OR OTHER CONTRACT PERSONNEL DO NOT MEET CERTAIN MINIMAL QUALIFICATIONS SUCH AS THE SECRETARY OF THE INTERIORS' PROFESSIONAL QUALIFICATIONS STANDARDS (FEDERAL REGISTER 8/29/83). IT IS RECOMMENDED THAT WORK REFERENCES BE CHECKED AND MULTIPLE BIDS BE OBTAINED BEFORE INITIATING A CONTRACTUAL AGREEMENT. THE SHPO WILL NOT RECOMMEND SPECIFIC CONTRACTORS, BUT MAY BE ABLE TO COMMENT ON PREVIOUS WORK REVIEWED PURSUANT TO STATE AND FEDERAL STANDARDS AND GUIDELINES. THE SHPO HAS A FILE CONTAINING THE VITAE OF MOST PRINCIPAL INVESTIGATORS. THE SHPO CAN BE CONTACTED AT THE MINNESOTA HISTORY CENTER, 345 KELLOGG BLVD. W., ST. PAUL, MN 55102 (612)296-5434.

*Vita of principal investigators on file at SHPO.

*THE 106 GROUP LIMITED
Attn: Anne Ketz
370 Selby Ave.
St. Paul, MN 55102
612/290-0977 Fax 290-0979

ARCHAEOLOGY DEPARTMENT
*Robert Clouse
Minnesota Historical Society
Ft. Snelling History Center
St. Paul, MN 55111
612/726-1171 Fax 725-2429

*ARCHAEOLOGY LABORATORY
Augustana College
2032 South Grange Avenue
Sioux Falls, South Dakota 57105
605/336-5493, 336-5494, 336-5499

*ARCHAEOLOGICAL RESEARCH INC.
900 W. Jackson St.
Suite 6E
Chicago, IL 60607
312/243-8282

*ARCHAOMETRY LAB, LTD
George Rapp, Susan Mulholland
10 University Drive
Duluth, Minnesota 55812
218/726-7957

*ARCHAEOLOGICAL RESEARCH SERVICES
3332 18th Ave. S., #1
Minneapolis, Minnesota 55407
612/721-4145

*ASC GROUP, INC.
4620 Indianola Ave.
Columbus, OH 43214
614/268-2514

*TON BAILEY
3336 Humboldt Ave. S.
Minneapolis, MN 55408
612/825-4947

*BEAR CREEK ARCHAEOLOGY, INC.
P. O. Box 347
Cresco, Iowa 52136
319/547-4545 FAX 547-5403

*LOUIS BERGER AND ASSOC., INC.
950 50th St.
Marion, Iowa 52302
319/362-0051

BRAIN INTERTEC
*Dr. Amy Ollendorf
1345 Northland Dr.
Mendota Heights, MN 55120
612/693-8700 Fax 683-8888

ALAN BREW
Benedict State University
Benedict, MN 56601
218/755-2965 or 218/755-3938

*BRW, INC.
Contact: Craig Johnson
700 Third Street South
Minneapolis, MN 55415
612/370-0700

*COMMONWEALTH CULTURAL RESOURCES
2530 Spring Arbor Road
Jackson, MI 49201
517/788-3550

*CONSULTING ARCHAEOLOGICAL SERVICES
PO Box 686
Creston, IA 50801
515/333-4607

*ESPY, HUSTON AND ASSOCIATES
PO Box 519
Austin, TX 78767
512/527-6840

HARRISMAN RESEARCH CENTER
*Dennis L. Toom
2002 University Avenue
Grand Forks, ND 58203
701/777-2435

HISTORIC PRESERVATION ASSOCIATES
Contact: *Timothy Klinger
P.O. Box 1064
Fayetteville, AR 72702
501/442-3779

*IMPACT SERVICES, INC.
Richard Strachan/Kathleen Roetzel
125 Catalina Dr.
Mankato, MN 56001
507/388-1237

*IMA CONSULTING
Contact: Kim Breakley
2635 4th St. SE
Minneapolis, MN 55414
612/623-0299 FAX 623-0177

*IOD FAYLER
3257 Virginia St.
Sioux City, IA 51104
712/258-4302

*JEFF KINNEY AND ASSOCIATES
PO Box 43
Manvel, ND 58256
701/696-2289

*LARSON-XIBESAR ASSOC., INC.
421 S. Cedar St.
Laramie, WY 82070
307/742-4371 or 701/696-2236

LEECH LAKE HERITAGE SITES PROGRAM
*Rose Kluth
RR 3, Box 100
Cass Lake, MN 56633
218/335-8095

*LOUCKS AND ASSOCIATES, INC.
Contact: Teresa Halloran
7200 Hemlock Lane, Suite 300
Maple Grove, MN 55369
612/424-5505 FAX 424-5822

*MICHAEL G. MICHOVIC
Department of Sociology-Anthropology
Moorhead State University
Moorhead, MN 56560
218/236-2035 or 218/236-3800

*MISS. VALLEY ARCHAEOLOGY CENTER
James P. Gallagher
1725 State St.
LaCrosse, WI 54601
608/785-8463

PANAMERICAN CONSULTANTS
Contact: Michael Cinquino
36 Brunswick Road
Depew, NY 14043
716/685-4198

*JAMES RUST
3115 Bryant Ave. S. #2
Minneapolis, MN 55408
612/822-3138 822-5058

*SOILS CONSULTING
PO Box 121
Longville, MN 56655
218/682-2110

*CLIFFORD STEMPER AND ASSOCIATES
641 Belgrade Ave.
North Mankato, MN 56001
507/388-7450

*UNIVERSITY OF SOUTH DAKOTA
ARCHAEOLOGY LABORATORY
Attn: Richard Fox
414 Clark St.
Vermillion, SD 57069
605/677-5594

R. C. VOGEL AND ASSOCIATES
216 Cleveland Ave. SW
New Brighton, MN 55112
612/604-0175 FAX 604-0250

*WELFORD ARCHAEOLOGY LAB
University of Minnesota
215 Ford Hall
Minneapolis, MN 55455
612/625-1062

WOODWARD-CLYDE CONSULTANTS
*Michael Justin
6485 Wayzata Blvd. Suite 660
Minneapolis, MN 55426
612/593-5650

Archaeological Geomorphology

*ANDERSON ENVIRONMENTAL SERVICES
1733A Mink Ranch Road
Port Washington, WI 53074
414/284-3354

*ARCHAOMETRY LAB
George Rapp/Susan Mulholland
10 University Drive
Duluth, MN 55812
218/726-7957

*ART BETTIS
Iowa Department of Natural Resources
Geological Survey Bureau
109 Trowbridge Hall
Iowa City, IA 52242
319/337-9754

BRAIN INTERTEC
*Dr. Amy L. Ollendorf
1345 Northland Dr.
Mendota Heights, MN 55120
612/693-8700 Fax 683-8888

*FOTH AND VAN DYKE, INC.
Attn: Curtis Rudak
The Waters Corporate Park
2900 Lone Oak Parkway, Suite 125
Eagan, MN 55121
612/942-0396

*IMA CONSULTING
Dr. Howard Mooers
2635 4th St. SE
Minneapolis, MN 55414
612/623-0299



June 24, 1998

Mr. Stephen G. Thornhill
Burns & McDonnell
9400 Ward Parkway
Kansas City, MO 64114-3319

Dear Mr. Thornhill:

SUBJECT: Dakota, Minnesota & Eastern Railroad's Owatonna and Mankato Expansion Environmental Impact Statement Comments

Thank you for the information you sent regarding the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) expansion project at Owatonna and Mankato, Minnesota.

I reviewed the Mankato by-pass Preferred Route, Alternative 1, and Alternative 2 using recent aerial photographs, National Wetland Inventory maps, and soil surveys. I have indicated the potential wetland impacts which would be a result of the proposed Mankato expansion on Exhibit C-2 (enclosed). Once it is determined which route will be used, the route should be walked to determine if there are any additional wetlands, the actual wetland impacts, and location of replacement wetlands. According to the Wetland Conservation Act, each wetland must be avoided to the greatest possible extent and unavoidable impacts replaced.

Dave Peterson, board conservationist with the Board of Water and Soil Resources (BWSR) Rochester office, reviewed soils maps, current aerial photos, and site investigated the proposed Owatonna expansion area.

Mr. Peterson found that with regard to potential wetland impacts under the Wetland Conservation Act, there are only two wetlands remaining in the vicinity of the area indicated on the site map, Exhibit C-3. The site map is not very specific regarding exact location of the proposed rail line; however, it appears that the proposed route would avoid the wetlands. The wetlands are located at the north end of the site south of the existing DM&E right-of-way. As Mr. Peterson indicated on Exhibit C-3, one wetland (PeMB) is at the north terminus and the second wetland (PeMC?) is east of the curve.

One West Water Street
Suite 200
St. Paul, MN 55107
(612) 296-3787
Fax (612) 297-5615

Field Offices

Northern Region:
394 S. Lake Avenue
Room 403
Duluth, MN 55802
(218) 723-4762
Fax (218) 723-4794

3217 Bemis Avenue N.
Bemidji, MN 56601
(218) 755-4235
Fax (218) 755-4201

217 S. 7th Street
Suite 202
Brainerd, MN 56401-3660
(218) 828-2383
Fax (218) 828-8038

Southern Region:
261 Highway 15 S.
New Ulm, MN 56073-8915
(507) 350-8074
Fax (507) 350-8018

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Suite A
Rochester, MN 55904
(507) 285-7438
Fax (507) 280-2875

Box 267
1400 E. Lyon Street
Marshall, MN 56258
(507) 537-6060
Fax (507) 537-6368

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St. Paul, MN 55107
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Fax (612) 297-5615

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Mr. Stephen G. Thonhill
 Page 2
 June 24, 1998

Also of concern along the Mankato and Owatonna routes is the loss of prime agricultural land and the disruption of access for these fields for owners and operators. Concern should also be expressed regarding the disruption and potential destruction of numerous agricultural drainage systems consisting of tile and ditches. The Owatonna expansion is adjacent to rapidly developing Owatonna and has numerous farm and non-farm dwellings in close proximity to the proposed line. A similar concern exists for the Mankato site and should be a consideration when selecting a corridor.

Thank you for the opportunity to comment on this Environmental Impact Statement. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

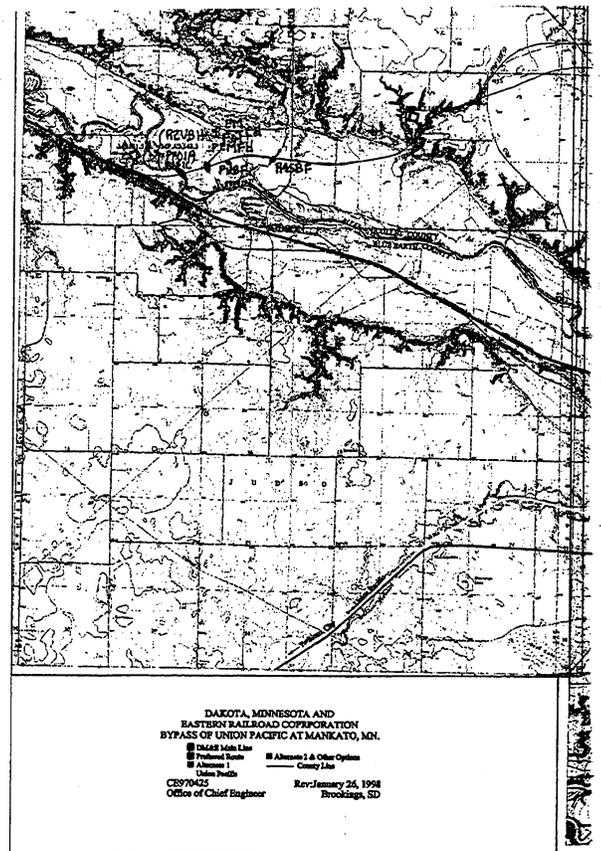
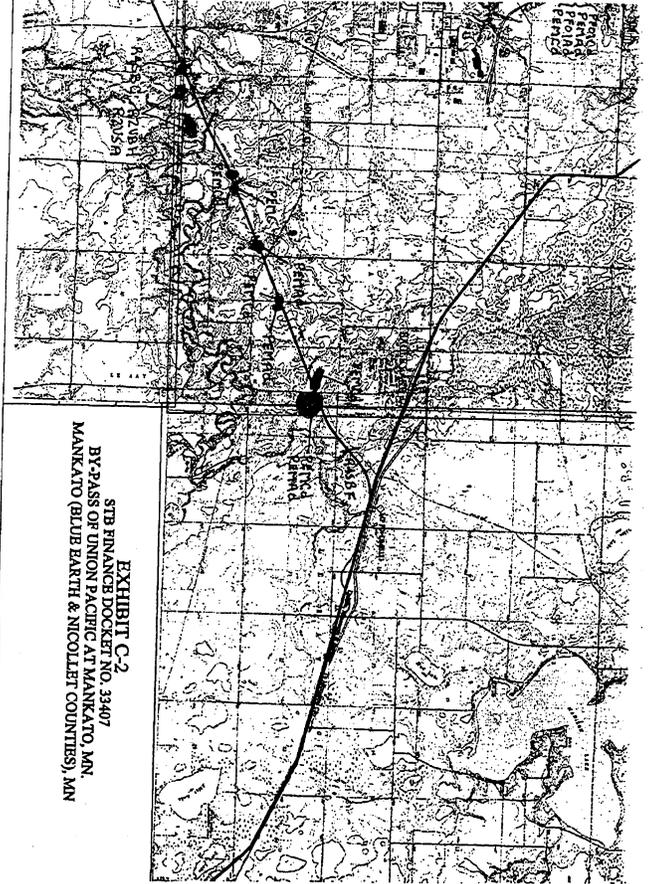
Chris Hughes

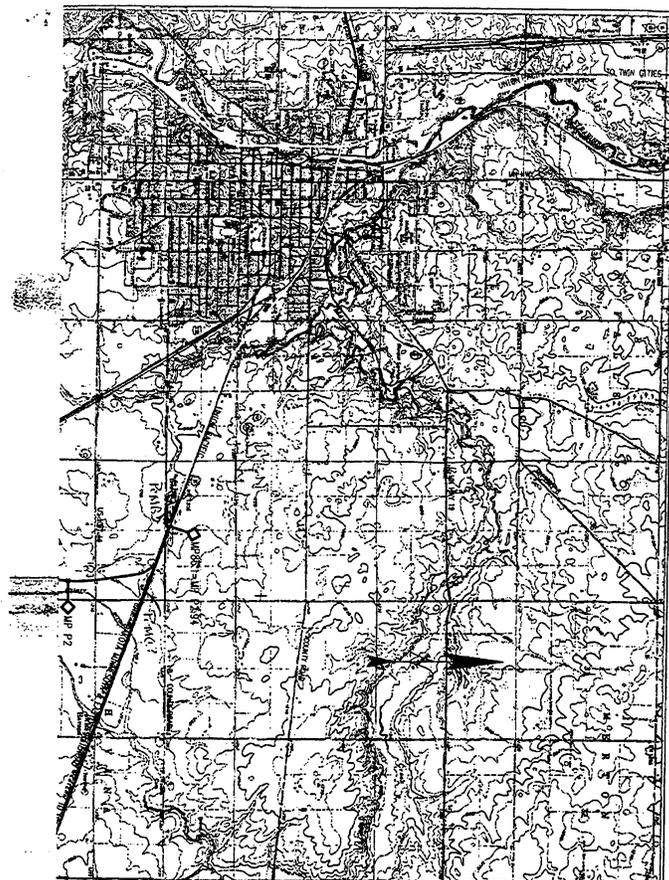
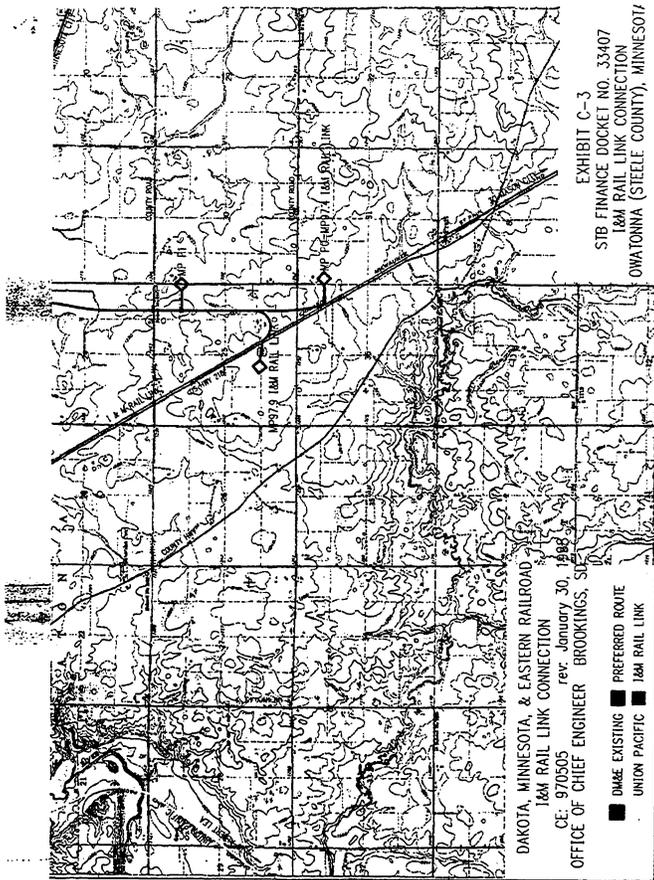
Chris Hughes
 Board Conservationist
 New Ulm

CH:eds
 Enclosure



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B26

STEVEN MORSE
 Senator District 32
 410 River St. - Box 175
 Dakota, Minnesota 55925
 Phone: (507) 643-8228
 Fax: (507) 643-8227
 and
 G-24 State Capitol
 75 Constitution Avenue
 St. Paul, MN 55155-1606
 Phone: (612) 296-5649
 Fax: (612) 296-6811
 E-Mail: sen.steven.morse@senate.leg.state.mn.us

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State of Minnesota



July 9, 1998

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

RE: Comments on the Draft Scope of Study for the Environmental Impact Statement (EIS) For the DM&E Railroad Corp. Construction and Operation Application Docket No. 33407

I. Statement of Interest in the Project

I am submitting these comments as the state Senator representing District 32, in Minnesota's southeast corner. My district includes the counties of Winona, Houston, and Fillmore. The DM&E's Rebuild Project includes plans to relocate and upgrade an existing connection with Canadian Pacific Railroad (CP) at or near the City of Winona/Minnesota City in order to accommodate increased coal and non-coal traffic that will result from the Powder River Basin (PRB) Extension and from improved service to existing shippers. (DM&E Application for Construction and Operation Authority to the Surface Transportation Board (STB), Docket # 33407, Vol.1, §1150.2(a).) (Hereinafter, STB app.)

My legislative district includes the City of Winona, as well as the towns of Lewiston, and Stockton, all of which will be impacted by the rebuild project and the increased rail traffic on the existing DM&E system due to the PRB Extension.

I chair the Environment and Agriculture Budget Division, and I am a member of the Agriculture and Rural Development Committee, and the Environment and Natural Resources Committee in the Minnesota Senate. I am also vice-chair of the Assembly on Federal Issues of the National Conference of State Legislatures. In addition, I serve on the High Speed Rail Advisory Committee, a multi-state working group which reviews and advises on planning activities relevant to the Wisconsin-Illinois-Minnesota High Speed Rail Corridor Feasibility Study.

COMMITTEES: Chair, Environment and Agriculture Budget Division; State Government Finance; Agriculture and Rural Development; Environment and Natural Resources; Governmental Operations and Veterans; Health and Family Security Policy Committee and Budget Division; Legislative Commission on Minnesota's Resources, Legislative Commission on Pensions and Retirement.

SERVING: Winona, Houston and Fillmore Counties

Page 2
 July 9, 1998
 Comments on EIS Scoping Study, Docket No. 33407
 Sen. Steve Morse

II. No Action Alternative

After attending a public meeting in Winona, MN with DM&E officials on July 2, 1998, and upon further reading and reflection, I think the STB must require a thorough analysis in the EIS of the no active alternative. In its PRB proposal, DM&E has not demonstrated a need for the project nor the financial resources to carry out the \$1.2 billion project. In addition, this proposal encourages the continued use of fossil fuels which adversely impact air quality and global climate change.

A. The Need for Increased Rail Access to PRB Coal Is Speculative.

The need for increased access to PRB coal has not been demonstrated by DM&E. In its application to the STB, DM&E states that "... a significant number of plants that could potentially use DM&E's services do not burn PRB coal today. [citation omitted] For these plants, which may consume as much as 22 million tons of PRB coal by the year 2010, burning PRB coal will only make economic sense with DM&E available as a low-cost service provider." (Emphasis added)(STB app. §1150.4(c).) This statement is purely speculative and self serving.

These power plants may not use PRB coal at all. It has not been demonstrated that the reason these plants do not burn PRB coal is because there is no low cost rail service provider. Nor is there any reason to assume these plants would use DM&E if the new construction is approved. Does the DM&E have service contracts with any of the utilities? Are negotiations taking place? Are there letters of intent from utilities expressing an interest in using PRB coal shipped over DM&E rail lines?

In addition, two rail carriers currently serve the PRB coal mines, the Burlington Northern Santa Fee (BNSF) and the Union Pacific (UP). Many of the utilities already have existing contracts with these carriers. (STB app. §1150.4(c).)

Although the Clean Air Act Amendments (CAAA) require all utility power plants to reduce allowable SO2 emissions in the aggregate by approximately 50% beginning January 1, 2000, (see, STB app. §1150.4 (c)), it does not necessarily follow that utilities will switch to lower sulfur PRB coal.

With the deregulation of electric power generation and marketing, utilities will have a market incentive to reduce SO2 emissions by promoting energy conservation programs and utilizing renewable energy alternatives, the EIS should include a detailed analysis of this scenario.



B. The Economic Viability of the DM&E Proposal is Speculative.

In order for this proposal to be economically viable the DM&E must be able to transport enough coal to make a profit. However, the DM&E has not demonstrated it has obtained commitments to ship PRB coal to anyone, much less 100 million tons of coal per year. (STB app. §1150.4(b)).

In addition, in order to create economies of efficiency the speed of the trains must remain constant. If one train slows down, all trains along the line will have to slow down. This will negatively effect the speed of the turnaround time, a major premise for profitability upon which the proposal is based. (STB app. §1150.4(c)). The DM&E proposal is unrealistic given winter weather conditions (freezing and blizzards) and spring weather conditions (flooding and tornadoes).

The no action alternative must analyze whether DM&E has sufficient capitalization to carry out the \$1.2 billion project (Phase I). The STB must require the DM&E to share the financial information necessary for the STB and state agencies to independently analyze the financial structure of the PRB project as a safeguard to the rail system in Minnesota, and in the other states impacted by this project.

In particular, Minnesota, through its Department of Transportation (Mn/DOT) has provided loans to DM&E through the Rail Service Improvement Program for line rehabilitation which still need to be repaid. The DM&E has stated that as part of the PRB project its debt load will be restructured. However, there is a lack of financial data on DM&E's ability to service new debt and repay all its outstanding loans.

The issue of sufficient capitalization and debt service capacity will also impact negotiations between DM&E and local governments for reimbursement of local costs associated with the project. The DM&E's economic viability is crucial in maintaining rail services to Minnesota's agricultural community because it is the only railroad to operate border to border, east/west through Minnesota's agricultural heartland.

C. The Environmental Impacts of the Continued Burning of Coal Must Be Considered.

The EIS must examine whether this project is necessary in light of the environmental impacts of the continued use of fossil fuels for electrical energy generation.

B. Environmental Justice Impact Category.

Although the section on environmental impacts of increased rail traffic on existing lines lists environmental justice as an impact category, it is not included in the outline of this section. This oversight must be corrected. (See below, III. C. 6., p. 7) In some communities, the proposed DM&E project will result in an increase in train traffic from 3 to 4 trains per day, to upwards of 34 trains daily. This will have a negative environmental impact on those neighborhoods and communities adjacent to the rail line. This category should include impacts to moderate income as well as low income communities.

C. Impact Categories

1. Air Quality

a. Evaluation of rail air emissions for existing rail lines.

The threshold proposed to apply to attainment areas of a 100 percent increase in rail traffic or an increase of eight trains or more per day on any segment of rail line affected by the proposed construction is appropriate and should remain in the scoping study.

The air quality analysis should include the air emission impacts of the type of fuel used to move the trains, as well as the air quality and health impacts of fugitive coal dust from the trains. The proposed threshold and analysis should apply to increased traffic on non-DM&E rail lines which will receive increased traffic because of the DM&E's proposed rebuild project or PRB extension, as well as to increased traffic on existing DM&E rail lines.

b. Potential air emission increases from vehicle delays at existing rail crossings.

Using the attainment threshold above as the threshold for air emissions from vehicle delays is reasonable and should remain in the scoping study.

The scoping study states that, "[e]missions from vehicle delays at existing rail crossings will be factored into the emissions estimates for the affected area." Please identify how this will be done. What Environmental Protection Agency (EPA) approved air emissions model will be used to factor in emissions from vehicle delays? How reliable is the proposed model?

2. Noise

a. The STB's environmental thresholds of a 100 percent increase in traffic or an increase of eight trains or more per day is reasonable and should remain in the scoping study.

The no action analysis should examine the air quality impacts from burning low sulfur coal as well as the adverse impact on global climate change. In addition, the no action analysis should consider the environmental impacts on water and air quality from continued mining activities.

The no action analysis should consider whether the DM&E proposal provides an economic disincentive for the use of environmentally superior SO2 reduction strategies, such as renewable energy alternatives and energy conservation programs.

III. Comments on Environmental Impacts of Increased Rail Traffic on Existing Rail Lines

The scoping study correctly identifies impact areas which will be addressed in the environmental impact statement (EIS) related to increased traffic on existing rail lines. These impact areas include the categories of air quality, noise, energy resources, safety, transportation systems, and environmental justice (emphasis added). These impact categories are appropriate and should remain the scoping document.

A. Increased Traffic on Non-DM&E Rail Lines.

The EIS should address the impacts of increased traffic on non-DM&E rail lines which will receive increased traffic because of the DM&E's proposed rebuild project or PRB extension. This is particularly important for the City of Winona because the DM&E's trackage ends outside the city limits. Any increase in rail traffic along the DM&E lines terminating in Winona will be transferred to either the Canadian Pacific (CP) or Union Pacific (UP) rail lines which cut through the Winona community.

In its application to the STB, DM&E proposes to significantly improve its rail lines through South Dakota and Minnesota to handle the increased traffic. The DM&E would then transfer those cars over to CP to be transported south through Winona or to the UP which would take the cars into the commercial harbor area for transfer to barges for transportation down the Mississippi River. (See, STB app. §115.04(a))

Thus the environmental impacts of increased rail traffic from the DM&E project will be transferred to other railroads that are not part of the overall project. The City of Winona (pop. 26,600) currently has about 30 trains daily going through it. Recently, CP announced that their current traffic levels could increase from 30 trains to 60 trains in the next ten years. The DM&E proposal would add another 34 trains, increasing rail traffic to more than 90 trains per day in the next 10 years.

b. It is reasonable to require that the number of sensitive receptors be identified when there is an increase to a noise level of 65 decibels Ldn or greater.

c. As part of the EIS, a noise analysis should be required when there is an increase in noise levels of three decibels Ldn or more, or an increase to a noise level of 65 decibels Ldn or greater.

The noise analysis should verify that the noise levels are in compliance with the Federal Railroad Administration's rules on noise limits and should compare the noise levels with the Minnesota Pollution Control Agency's noise rules to determine whether there is compliance with the state rules. In addition, noise mitigation measures and the cost of implementation must be addressed. The significant increase in the number of trains (up to 34 per day in 10 years), as well as the length of the trains (125 car-trains), justifies the need for a noise analysis. (See, STB app. §1150.4(b)).

3. Energy Resources

This section should include an analysis of the environmental impacts of the continued use of low sulfur coal as an energy fuel. The analysis should look at the air quality impacts from burning low sulfur coal and the impact on global climate change, as well as the impacts to water and air quality from continued mining activities. (DM&E is projected to carry 100 million tons of coal each year beginning in year six. See, STB app. §1150.04(c) and (e)).

Although the Clean Air Act Amendments (CAAA) require all utility power plants to reduce allowable SO2 emissions in the aggregate by approximately 50% beginning January 1, 2000, (see, STB app. §1150.4 (c)), it does not necessarily follow that utilities will switch to lower sulfur PRB coal.

With the deregulation of electric power generation and marketing, utilities will have a market incentive to reduce SO2 emissions by promoting energy conservation programs and utilizing renewable energy alternatives, the EIS should include a detailed analysis of this scenario. Is an increase in rail traffic of upwards to 34 trains a day necessary for utilities to meet their energy needs or CAAA requirements to reduce SO2 emissions? The DM&E proposal may provide an economic disincentive for the use of these environmentally superior SO2 reduction strategies.

4. Safety

The outline of issues to be addressed in this section is reasonable and should be retained. In addition, this section should include the impacts of increased traffic on non-

DM&E rail lines which will receive increased traffic because of the DM&E's proposed rebuild project or PRB extension.

As stated above, this is particularly important for the City of Winona because the DM&E's trackage ends outside the city limits. Any increase in rail traffic along the DM&E lines terminating in Winona will be transferred to either the Canadian Pacific (CP) or Union Pacific (UP) rail lines which cut through the Winona community. The City of Winona currently has about 30 trains daily going through it. CP recently announced that their current traffic levels could increase from 30 trains to 60 trains in the next ten years. The DM&E proposal would add another 34 trains, increasing rail traffic to more than 90 trains per day in the next 10 years.

The increased rail traffic will result in trains interfacing with vehicular traffic at more than 40 crossing within the City of Winona (pop. 26,600). Because the CP rail line divides the community, this increase in rail traffic will require grade separation between the rail and vehicular traffic. Currently, the ambulance service and hospital are located on separate sides of the railroad tracks. Any increase in rail traffic will increase the amount of time that the current crossings are blocked and will negatively impact the ability of emergency vehicles to access the full community.

The EIS must adequately address the impacts which will be felt in Winona County, including detailed estimates on the amount of rail traffic which will end up in the communities of Winona, Lewiston, and Stockton. In addition, increased rail traffic will impact the existing road transportation system within these communities and the EIS must include a detailed analysis of this impact.

5. Transportation Systems

In addressing the impacts to other rail carriers and vehicular delays at new grade crossings having average daily vehicular traffic of 5,000 or more, consideration must be given to the impacts on the City of Winona as discussed above. In addition, the analysis of vehicular delays should include existing grade crossings as well as new grade crossings. The need for grade separation at existing and new grade crossings should be addressed and some criteria developed for when grade separation must occur.

6. Environmental Justice

The EIS should address environmental justice issues in its analysis of increased traffic on the existing DM&E system and on non-DM&E rail lines which will receive increased traffic because of the DM&E's proposed rebuild project or PRB extension.

In addition, local governments' concerns must be addressed to their satisfaction before the STB makes a final decision. This requires sufficient details and information so that local governments can analyze the data and identify their concerns.

Local governments must be given adequate time and opportunities to present their concerns to the STB, in order for the STB to consider them before a final decision on the DM&E proposal is made.

The DM&E proposal raises serious questions as to whether the PRB project is needed, whether the project is economically viable as proposed, and whether the project creates an incentive for the continued burning of environmentally harmful fossil fuels.

In light of the potential financial instability of the project, the potentially adverse environmental impacts of the project, and the profoundly negative impact the project will have on the quality of life of the people living along the rail corridors, the no action alternative must be given a thorough and complete analysis in the EIS.

I appreciate the opportunity to comment on the EIS draft scoping study.

Respectfully submitted,

Steve Morse
Senator Steve Morse
District 52

enc. 10 copies

For example, in the City of Rochester, many of the homes and neighborhoods which will be most adversely affected by the DM&E expansion are in low income areas. Many low income communities include single parents, minority families, recent immigrants, multi-family units, and households with extended families.

The EIS should analyze the demographics of the proposed and existing rail corridors and identify adverse environmental impacts to communities from an increase in rail traffic. This analysis should include, but is not limited to, noise levels, air quality and health impacts from fugitive coal dust, air quality impacts from vehicular delays at grade crossings, impacts on the market value of real property, emergency response delays, and increased stress.

In particular, the EIS must consider the profoundly negative impact the increased train traffic will have on the market value of people's homes along the existing and proposed rail corridors. In some cases, a home's market value may be non-existent—all the built up equity gone or significantly diminished. The quality of life and the financial well-being of hundreds, perhaps even thousands, of individuals and families will be negatively impacted by the DM&E's proposal.

In addition, the EIS should identify language barriers which may exist and which could limit public participation and understanding of the proposed project, as well as identify methods to overcome these barriers.

IV. Concluding Remarks

The DM&E proposal has the potential to greatly increase the benefit of the rail line to existing users by upgrading existing connections and rail lines to create a Class I railroad. The project will allow DM&E to address serious safety issues, and will include additional sidings, signaling, and grade crossing protection improvements. (See, STB app. \$1150.02(a). This should result in improved service and reliability to existing shippers of agricultural commodities and other products. (See, STB app, \$1150.04(b).

The DM&E proposal also has the potential to adversely impact a number of existing communities through increased traffic on its rail lines or on the rail lines owned by other carriers. The proposal could also have a negative impact the agricultural community by delaying freight shipments for small operations, such as coop elevators.

I urge the STB to ensure that there are ample time and opportunities for the public to participate in an informed and meaningful manner.

Ruth Johnson
State Representative
District 24B
Niciolet, LeSueur
and Blue Earth Counties

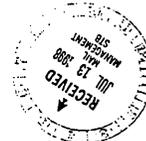


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EDUCATION; HEALTH AND HUMAN SERVICES; ENVIRONMENT AND NATURAL RESOURCES

July 9, 1998

Ms. Victoria Rutson
Section of Environmental Analysis
Surface Transportation Board
1925 K Street
Washington, DC 20423



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FD33417
Dear Ms. Rutson:

I write to you about the proposed Powder River Basin Expansion Project in Minnesota. My legislative district will be impacted by this project.

My major concerns are of two types, environmental and public safety. The air quality impacts of this project have not been addressed by the proposers. The potential environmental effects of diesel exhaust, coal dust, and noise must be made clear through the Environmental Impact Statement (EIS). The state of Minnesota, and the federal government, are spending millions of public dollars to clean up the Minnesota River. We must be assured, through the EIS process, that this river, which is only beginning to recover, will not be adversely impacted by the additional faster trains that are envisioned by this project. We must also understand how the area wildlife will be impacted.

Environmental impacts are important to us, but even more so are the potential impacts on humans. Before this project is approved, the local people need to know how increased levels of diesel exhaust, coal dust, noise and vibration will affect their health and quality of life. Two other safety issues that must be addressed by the Surface Transportation Board, but may be outside the scope of the EIS, are: 1) grade crossing signals and surfaces and 2) the proposed use of an unproven train control system.

Thank you for your attention to this letter, and we hope you will devote adequate attention to this proposal, and to the concerns of those most impacted.

Sincerely,
Ruth Johnson
Ruth Johnson
State Representative

187804



Minnesota Department of Natural Resources

500 Lafayette Road
St. Paul, Minnesota 55155-40...

July 10, 1998

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

Attn: Elaine K. Kaiser, Chief
Section of Environmental Analysis
Environmental Filing

Re: Draft Scope of Study for an EIS for the Dakota, Minnesota and Eastern Railroad Corporation, Construction of New Facilities in Wyoming, South Dakota and Minnesota

Dear Sir or Madam:

The Minnesota Department of Natural Resources (MDNR) has reviewed the Scope of Study for the above referenced project and provides the following comments for your consideration.

While the MDNR has many potential concerns relating to the proposal, we will limit our comments at this time to issues which we believe should be addressed in the Environmental Impact Statement (EIS), as follows:

Issues surrounding upgrade of existing tracks

The Dakota, Minnesota and Eastern Railroad (DM&E) has indicated that existing track in Minnesota will be upgraded to meet higher performance standards. The Surface Transportation Board (STB) has indicated that it will not be addressing the upgrading of the existing system in the EIS, as it only has authority over route extensions. However, the DM&E has also indicated that it will be adding many passing tracks to increase capacity of the line. We believe the EIS should address the number of passing tracks that will be constructed, and their approximate length and location along the route. Locations of prairie remnants or other natural resources that may be affected by the construction of passing tracks, and opportunities to avoid and mitigate losses of prairie remnants, should be identified in the EIS. If any bridges or culverts will need to be replaced or widened as part of the upgrade, this

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July 10, 1998
Page 3

Currently the DM&E, because of inadequate trackage capacity coming out of Mankato, has contracted with Union Pacific Railroad to share its track. If the DM&E line is upgraded, resulting in up to forty trains per day, assurance is needed that the relationship with Union Pacific will be terminated so that some of the increased traffic will not be diverted to the U. P. Line. This situation would pose an additional set of impacts not addressed by the Scoping Document, and would increase the negative impacts on Minneopa State Park.

Additional rail traffic will substantially increase the likelihood of wildfire within Minneopa State Park. The park in the past has experienced wildfires ignited by passing trains. These fires have not only destroyed park vegetation, but have gone unreported to park management. This situation will only worsen with an increase in train frequency. No mention of fire is made in the Scoping Document, nor is the issue of accountability addressed. These impacts should be covered under the biological resources and safety sections of the EIS.

Additional rail traffic will increase the likelihood of derailments that may spill toxic material or other cargo in Minneopa State Park, an environmentally, culturally and historically rich and sensitive area. Irreplaceable natural resources and/or historical or archaeological artifacts could potentially be destroyed. The DM&E has a history of derailments, one which recently occurred adjacent to the Minneopa State Park boundary. While upgrading may decrease the likelihood of derailments associated with poor track condition, the addition of passing sidings and the proposed increase in train speeds will make derailments that do occur more disastrous. While the Scoping Document addresses impacts within or immediately adjacent to the right-of-way, it does not address impacts of spills carried by wind or water to areas somewhat more remote but still within a "zone of influence".

The Air Quality section of the Scoping Document discusses coal dust or ash cargo becoming airborne and settling on buildings and facilities, waters, soils and people within the park. This will result in the need for additional cleaning, accelerated building decay, increased health risks for staff and park users and changes to soil and water PH.

The Scoping Document does not address an increase in odors that may result from additional trains. Park users and employees will be faced with an increase in the disagreeable smoke from diesel locomotives. Additionally, the DM&E has a history of not cleaning up spilled cargo. The park is currently suffering from odors resulting from rotting wheat from an earlier spill that has not been removed.

The selection of the northern alternative for the Mankato bypass would result in significantly less impact to Minneopa State Park. The potential threats to the park discussed above would be eliminated, and if the line is abandoned completely, the impacts associated with current operations would also be eliminated. Impediments to access to the Minnesota river would be eliminated, thereby providing additional recreational opportunities and the potential for additional facilities.

July 10, 1998
Page 2

should also be addressed in the EIS. Specifically, the EIS should list the waters that will be crossed, how they will be crossed, what mechanisms will be used to assure integrity of flows, and what construction techniques will be used to avoid impacts to the water bodies and to fish spawning.

Another issue that should be addressed is disposal of railroad ties that are replaced as part of the upgrade. The DM&E has had difficulty in dealing with this issue in the past. The EIS should discuss how railroad ties are going to be disposed of, legally and in an environmentally safe manner.

Issues surrounding Mankato Bypass

The EIS should contain a vigorous documentation of impacts to fish and wildlife habitat, as well as an accounting of habitat conversions, for each of the three Mankato route alternatives. We recommend that the STB initiate an analysis using the U.S. Fish and Wildlife Service's Habitat Evaluation Procedures (HEP) to assess the impacts over time, of each alternative, to fish and wildlife resources. Critical parts of HEP that the MDNR would want to be involved in include assembling a HEP team that represents divergent interests and expertise, selecting the suite of evaluation species, and selecting the scale of time over which impacts would be assessed. Evaluation of impacts to both state and federally listed threatened and endangered species could be incorporated under HEP procedures.

New facilities

Exhibit D (Operating Plan, page 8) indicates that three new staging yards will be constructed, and the marshaling yard at Waseca will be relocated to just outside the city. The location of these new staging and marshaling yards needs to be addressed, as well as the impacts to fish and wildlife habitat resulting from the construction and operation of these new yards. The EIS should address the size of the yards, the extent of habitat conversions that will occur, and identify mitigation opportunities.

Impacts to Minneopa State Park

The proposed additional rail traffic through Minneopa State Park, located just west of Mankato on the existing DM&E line, will greatly increase the frequency and level of noise intrusion events in the park. More than 112,000 users visit the park annually, and their experience will be adversely affected by the reduction in peace and solitude which the park now provides. Particularly disturbing is the impact that all but the most northern alternative will have on campers at the park. The existing route through Minneopa lies directly between the campground and the Minnesota River. An occasional passing train, as at present, can go unnoticed or be disregarded as acceptable to most visitors. Twenty to forty trains per day, as is proposed, will equate to sleepless nights and an unacceptable camping experience.

July 10, 1998
Page 4

The Minnesota River Joint Powers Board, in cooperation with the MDNR, is currently developing a Minnesota River Recreational Corridor Plan. One of the goals identified in that process is the completion of a multi-use trail system from Mankato to the South Dakota border. Selection of the northern route for the DM&E and abandonment of the existing line would make available a significant segment of that trail alignment, if it could be acquired for public use. This linkage to Minneopa would greatly facilitate the park's mission.

Overall scope and alternatives

The Scoping Document contains a broad discussion of potential coal markets and ultimate destinations east of Winona, but lacks specific details. It would be desirable to have estimates of the percentage of coal going to the Great Lakes and Chicago by rail, versus up the Ohio River Valley by barge. If a large proportion is ultimately destined to be shipped by barge, then the following issues need to be addressed:

1. The need for expansion of transfer and barge loading facilities at Winona.
2. The impact of coal dust deposition on the Mississippi River and associated wetlands and upland habitats, as well as air quality, in the vicinity of the transfer facility.
3. Alternatives for loading coal onto barges at the Missouri River, rather than transporting it across Minnesota to the Mississippi River.

Thank you for opportunity to review this document. If you have any questions regarding these comments, please contact Ken Wald of my staff at (651) 296-4790. We look forward to receiving the Environmental Impact Statement.

Sincerely,

Thomas W. Balcom

Thomas W. Balcom, Supervisor
Environmental Review and Assistance Unit
Office of Management and Budget Services

- c: Con Christianson Mike North
Bret Anderson Howard Ward
Pat Arndt Jackie Lind
Ceryl Heide Don Nelson



STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY III
ATTORNEY GENERAL
Office of the Secretary

NOV 09 1998

October 29, 1998



Part of
Public Record
Mr. Vernon Williams
Secretary
Surface Transportation Board
400 Seventh Street SW
Washington, DC 20590

Re: Application of Dakota, Minnesota & Eastern Railroad Corporation for Extension of Line into Powder River Basin, Wyoming; Finance Docket No. 33407

Dear Mr. Williams:

As Attorney General of the state of Minnesota, I submit the following comments on behalf of the citizens of Minnesota in respect to the Application of the Dakota, Minnesota & Eastern Railroad Corporation (hereinafter referred to as "DM&E"), STB Finance Docket No. 33407.

The DM&E railroad is an important transportation provider for southern Minnesota. The railroad is the only east-west service provider for the southern third of the state. It fulfills a critical mission in transporting to eastern markets agricultural and other commodities produced in Minnesota. If the DM&E or a successor railroad were to stop providing this service, Minnesota producers would suffer losses by having to pay the higher costs of alternative shipping modes.

We do not object to upgrading the DM&E trackage and service in Minnesota. In fact, as the Federal Railroad Administration concluded in 1997, it appears that upgrading may be necessary to provide current services in a safe and efficient manner. However, we are concerned that the massive upgrading and improvements outside of Minnesota proposed by DM&E as part of its Application in this case may impair the railroad's ability to service our farmers and businesspersons.

The matter now before STB involves DM&E's application for a certificate allowing it to extend its railroad lines to the Powder River Basin area in Wyoming. Federal law requires STB to grant a certificate for extension "unless the Board finds that such activities are inconsistent with the public convenience and necessity." 49 U.S.C. § 10901(c). In reviewing applications under this section, STB must consider:

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2. The DM&E Application does not establish that there is a "public demand or need" for the coal transporting portion of this project nor that existing carriers will not be harmed.

In applying the law's public necessity standard, STB must find that there is "a substantial need for present or future service which is not or cannot be adequately supplied by existing carriers or facilities." *Denver & Rio Grande Western Railroad Co. v. US*, 312 F. Supp. 329 (1970), aff'd 91 S.Ct. 188 (1970).

Two major national carriers already provide coal train service from the Powder River Basin area to what DM&E terms its "core market" states. The Application provides no data indicating that the Burlington Northern Santa Fe and Union Pacific railroads do not already, or cannot in the future, meet the coal shipment demands of the Basin coal producers.

In addition, there is a real question whether the United States will maintain its continued heavy reliance on coal-fired generation of electricity. Although the burning of Powder River Basin coal is less harmful to the environment than is the burning of high-sulfur coals, the increasing public recognition of the harmful effects of "greenhouse gases" may soon lead to an emphasis on alternative energies with a consequent lessening of the need for coal of all varieties.

3. The DM&E Application raises a number of public health and safety issues that must be resolved before a certificate is issued.

Several Minnesota communities and institutions have raised with this Office serious public health and safety issues that must be considered as part of the Environmental Impact Statement (EIS) to be performed as part of STB review of the DM&E Application.

For instance, the city of Rochester, Minnesota, and the County of Olmsted, have both requested our Office to intervene on issues relating to public safety hazards associated with a large increase in train traffic moving through crowded streets in Rochester. The county and the city foresee impediments to critical emergency services, school and city bus traffic, commercial deliveries, and commuter traffic. The Mayo Clinic, the federal prison medical facility, and others cite health risks posed by greatly increased noise and air pollution. Residents living near the DM&E line anticipate a significant reduction in general quality of life and property values from increased train traffic.

The City of Winona, Minnesota, also opposes the extension for many of the same reasons identified by Rochester and Olmsted County. City officials in Winona are concerned about access to emergency services such as the community hospital, and congestion in the city will increase greatly because all city rail crossings are at-grade. Other communities along the line will suffer the same problems and diminution of property values.

- (1) whether [the railroad] is fit, financially and otherwise, to undertake the construction and provide rail service;
- (2) whether there is a public demand or need for the service; and
- (3) whether the competition would be harmful to the existing carriers.

Tongue River R.R., Rail Construction & Operation, Ashland to Decker, MT., STB Finance Docket No. 30186, 1996 WL 648614 (November 8, 1996).

We believe the record in this case is inadequate and incomplete to permit STB to conclude that the proposed extension is economically feasible. In particular, we have three concerns.

1. There is no information in the DM&E Application sufficient for STB to conclude that DM&E is "fit, financially and otherwise," to undertake the project.

The \$1.3 billion DM&E estimates as the project cost would be financed one-fourth with equity and three-fourths with debt. (DM&E Application at page 77) Beyond that statement of general financing structure, the application contains no specific information on sources of the financing.

DM&E is already heavily in debt. In addition to private indebtedness, the company owes the states of South Dakota and Minnesota for past loans. (Pleading filed by Mark Barnett, Attorney General of South Dakota and the submission of the Minnesota Department of Transportation in this matter.) In respect to its private debt financing, as recently at March 31, 1997, the railroad's independent auditor concluded that "the corporation was in violation of certain [debt] covenants." (Application at 10; statement of independent auditor Deloitte & Touche, LLP.)

Minnesota's state and local governments will be adversely affected if DM&E finds itself unable to meet its commitments to pay for all or part of the many public improvements that will be associated with this project. As part of its Application, DM&E commits to funding many grade crossing improvements, safety mechanisms, and other infrastructure items. Preliminary analyses by state and local governments indicate that more improvements than those specified in the Application will be needed. Therefore, the financial exposure of our governmental units will, if anything, be greater than contemplated in the Application if DM&E is unable to live up to its obligations with respect to such improvements.

There is no indication in the Application that DM&E has yet secured even tentative commitments to purchase their services by eastern states' electric generating companies. Absent such commitments, there are no guarantees that the projected \$100 million in revenues can be secured.

It is our preliminary judgment that these health and safety concerns have substantial merit. However, this part of the Application process is not the appropriate place to provide the detail associated with these issues, and we respectfully reserve the right to present this detail after STB issues its scoping decision on the EIS. We therefore request that the Minnesota Attorney General be made a Party of Record both for purposes of this response to the economic feasibility phase and to our forthcoming response in the environmental impact phase.

Respectfully submitted,

HUBERT H. HUMPHREY, III
Attorney General

AQ-160434 v1

William Kuisle
State Representative
District 31A
Olmsted and Dodge Counties



Minnesota
House of
Representatives

COMMITTEES: AGRICULTURE; LOCAL GOVERNMENT AND METROPOLITAN AFFAIRS; TRANSPORTATION AND INFRASTRUCTURE;
TRANSPORTATION FINANCE DIVISION

April 8, 1999

Elaine Kaiser
Section of Environmental Analysis
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001

Re: STB Finance Docket No. 33407 (D. M.&E. R.R.)

Dear Ms. Kaiser:

I am writing to voice my opposition to the further study of an alternate route (bypass) being submitted by the city of Rochester, Mn. I have served on both the Transportation Finance and Policy Committees for three years in the MN State Legislature dealing with the issues facing transportation both at the state and local level. The alternate route would simply create more problems than it solves.

I am sending in maps put together by the Rochester-Olmsted County Planning Department that shows an analysis of how Fire and Ambulance runs in my district would be severely impaired by the rerouting of the railroad. I find the fact that one area could be accessed by air only (#9 & #18) and delays of over 7 minutes in other cases is unacceptable. Mayo Clinic's complaints of small delays in emergency responses in Rochester seem slight in comparison to the delays that will be experienced by the citizens of Olmsted County that will be affected by a bypass route. The infrastructure costs that would be needed to address the concerns of the people living along the proposed bypass would be enormous.

Olmsted County is a fast growing area with a tremendous amount of new houses being built throughout the county. In fact a recent study submitted by the city of Rochester that lists the number of homes impacted by a bypass is severely outdated do to the lack of current data kept on the location of new homes being built. In fact the first bypass proposal submitted by the city of Rochester was adjacent to a new development in the city limits that wasn't even on the city's maps. Trying to move the rail line is extremely difficult do to terrain, wetlands, and streams.

The present infrastructure presently in place in Rochester (two grade separations) is a start to addressing the legitimate concerns that are being expressed by the local elected officials. More needs to be negotiated with the railroad to further address safety concerns and who will pay for

the infrastructure costs that are needed along the present route.

Thank you for allowing me to voice my opposition to further study of an alternative route in Olmsted County.

Sincerely:

William Kuisle
Rep. William Kuisle
District 31A



6311 County Road 8 SW, Rochester, Minnesota 55902 (507) 282-5714
State Office Building, 100 Constitution Ave., St. Paul, Minnesota 55155-1298 (612) 296-4278
FAX: (612) 296-9853 TDD 1-800-657-3550



Department of Transportation
Division of Fiscal & Public Assistance
Office of Air, Rail & Transit
700 E Broadway Avenue
Pierre, South Dakota 57501-2586
FAX: 605/773-3921

Aeronautics 605/773-3574
Railroad/Transit 605/773-5037

June 26, 1998

Stephen G. Thornhill
Burns & McDonnell
PO Box 419173
Kansas City, MO 64141-6173

RE: Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation
Powder River Basin Expansion Project
Request for Project Area Information

Dear Mr. Thornhill:

It is very difficult at this point to know what information we are to provide to you regarding the environmental impact study. Not all agencies have responded, but you will find below a combination of basic information, comments, and references to databases that are available. This may be a starting point for you, and I will continue to follow up with what additional information may be forthcoming. In addition, we are all continuing to work on our thoughts for the scope of the EIS, and those comments will be submitted prior to the July 10 deadline.

Transportation: Contact Roxanne Rice, 605-773-3284
Traffic Counts

According to the draft scope of the EIS, the crossings which have an average daily count of 5,000 or more will be analyzed. South Dakota is a rural state, and our comments to the STB regarding the scope will be to look at all crossings which have ADT of 1,000 or more. The SD DOT can and will provide a list of crossings which include ADT's, but suggest that because our data is quite old, that some measures be taken to update the ADT's. I understand that the FRA also maintains a listing of all RR crossings which might be useful to you.

Sight Distance Hazards

Sight-distance hazards need to be analyzed and mitigation measures suggested. Sight distance hazards may include physical structures, or natural structures. These hazards cannot be seen on a quad map. These issues need to be gathered by the consultant from communities, as well as from counties and the state. Mitigation suggestions should include how to best deal with these hazards, either in moving or removing structures, moving the road, moving the railroad, or proper signage.

Stephen G. Thornhill
June 26, 1998
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Access Limitations

Because of longer and more frequent trains, access will be limited more so than it is now. This will affect emergency vehicles, businesses, state parks, and communities as a whole. Data should be gathered which would allow the consultant to identify problem areas and suggest mitigation measures for these problems, including separation structures, moving roads, or moving railroads.

With more trains there is also a greater probability for a train to be stopped across many roads either in a town or in the country, blocking access for long periods of time. There is no question this will happen with sidings. The EIS needs to gather data from the DME on where these sidings will exist, determine an average amount of time that a train will be sitting idle, how many roads will be blocked with no alternate access, and address mitigation measures for those towns, cities, etc.

Other Safety Issues

In general, analysis must be done to identify potentially hazardous crossings, crossings that affect state highways, or other roads with high ADT's. The EIS needs to gather data on these crossings and suggest mitigation including separation structures, signage, and alternate routes for the road or the railroad.

Impacts to other rail carriers

The plan submitted by the DME does not specify how the increased traffic will affect the Burlington Northern Santa Fe's operations with regard to the "crossing" at Wolsey. This is state-owned trackage operated by the BNSF. Without a separation, issues regarding right of way need to be addressed.

Summary

In summary, each and every crossing needs to be analyzed with regard to access, safety and sight distance hazards. Mitigation measures should consider separation structures, upgrade to and new signal systems, sight distance improvements, stop sign and cross buck installations, and crossing eliminations by either closing or relocating a road, relocating the railroad, and safety training programs. Suggested measures should be based first on safety considerations, then on operational effectiveness and costs.

SD DOT is prepared to provide the consultant with a list of crossings including ADT's at those crossings, as well as a list of county highway superintendents, and city officials through which additional information should be gathered.

In addition, SD DOT Office of Railroads will provide information regarding highway improvements that may affect current DME plans (i.e., upgrading from 2 lane to 4 lane). The general point of contact for the SD DOT Office of Railroads is Roxanne Rice.

Game, Fish and Parks: Contact John Kirk 605-773-4501

Potential impacts to fish, wildlife and habitat resources that might result from the coal rail line project as identified from the preliminary plan maps provided by DM&E can be divided into three



general categories: (1) upgrade and rebuild, (2) new construction, and (3) impacts associated with the operation following the upgrade, rebuild and new construction. These categories, as well as three others are discussed below. These comments constitute what we feel needs to be added to the current Surface Transportation Board's (STB) Draft Scope of Study for the EIS to adequately address potential impacts to fish, wildlife and habitat resources resulting from the proposed project.

Upgrade and Rebuild

Although upgrading and rebuilding existing rail grades/lines might be considered ongoing activities, the scale of the proposed project is such that these activities might cause more than minimal impacts to fish and wildlife habitat resources. The degree of potential impacts will depend on the nature of upgrade construction work (e.g. simply laying new rail on existing grade vs. construction of new bridges, culverts, grade improvements, etc.). Some of this work would likely result in minimal temporary impacts to wildlife habitat resources, while major reconstruction of bridges and construction of additional sidings would result in more significant impacts to resources. The extent of these impacts cannot be determined until more information is provided regarding major reconstruction projects (e.g. bridges) and the number, location and lengths of sidings.

New Construction

New construction activities are more likely to result in significant impacts on fish, wildlife and habitat resources. This is especially true of the alternative calling for construction of new rail line from just south of Wasta, up the Cheyenne River valley for approximately 66 miles and then up the Cheyenne Valley from Edgemont to the Wyoming border, a distance of approximately 18 miles. We recognize that there is less likelihood for additional impacts to resources between Edgemont and Burdock due to the existing Burlington Northern coal rail line, although increased rail traffic in this area should be evaluated nonetheless. That part of the line not in the river valley from south of Smithwick to Edgemont, approximately 30 miles, is also important to wildlife. From our perspective, this route is the most environmentally damaging during construction and has the most potential to cause environmental damages in the future when the line is in operation.

The Cheyenne River corridor is considered one of the most pristine river corridors remaining in western South Dakota. Only one percent of western South Dakota outside of the Black Hills is covered by woodland riverine habitat. Therefore, this habitat type is of great importance to both game and non-game species.

Please note that the following list of issues may not be exhaustive at this time. SDGF&P strongly urges the STB's consultant to follow-up this correspondence with a meeting with appropriate GF&P and other resource agency staff to more clearly define the scope of fish, wildlife and habitat issues related to the proposed project. Toward this end, perhaps the most important task to complete is to further define gaps in data sets regarding the potential array of impacted habitat types and species, and to design appropriate field surveys necessary to evaluate potential impacts that might result from the proposed project.

Operation Following Construction - Increased Train Traffic

Currently little seems to be known about the extent of adverse effects to fish and wildlife resources that might occur as a result of the large volume of long coal trains (estimated at 40 per day) anticipated to use the proposed rail line. Consequently, we believe that this issue needs to be evaluated in detail during the EIS process.

Issues including, but not necessarily limited to the following must be considered in such an evaluation:

- Disturbance of wildlife due to noise.
- Disruption of wildlife movement across the rail line during daily movement from one habitat type to another, or during seasonal migration.
- Impacts to antelope and deer wintering areas.
- Disruption, or fragmentation of established territories and routines of secretive species such as the mountain lion (a state threatened species) and bobcat.
- Direct wildlife losses due to being hit by trains.
- Adverse effects to nesting birds, including raptors, by disturbance and disruption due to train traffic.
- Effects to fish and wildlife from coal dust (e.g. environmental contaminants in coal dust, uptake by vegetation, consumption of vegetation by wildlife, incidental direct consumption of dust/soils by wildlife).
- Release of fuel and/or other hazardous materials into the Cheyenne River and/or tributaries and effects to aquatic communities.
- Increased train traffic across a SDGF&P owned Game Production Area located two miles south of Oral will disrupt wildlife (see above) and recreational uses (e.g. hunting, wildlife watching, etc.) of this tract of public land. Evaluation of applicability of existing easements will have to be completed.
- Increased train traffic across Lake Preston in Kingsbury County may disrupt wildlife (see above) and recreational uses (e.g. fishing, hunting, wildlife watching, etc.) of this public meandered lake. Currently, the lake is a popular fishery, but during lower water years, the lake has significant wildlife value and can be a popular hunting area.

Issues that we have identified to date which must be addressed in the Environmental Impact Statement process are as follows:

- Impacts to riparian forest and woody draw habitats, including direct removal and fragmentation of these habitat types. In addition, measures to be taken to minimize impacts such as avoidance or mitigation measures should be addressed.
- Impacts to riparian oxbow wetlands and measures to avoid, minimize and mitigate impacts.
- Introduction of noxious weeds resulting from soil disturbance and measures to control them.
- Revegetation of grade side slopes and borrow areas with desirable native species. Avoidance of planting species (e.g. sweet clover or alfalfa) that are attractive to grazing wildlife must be considered.
- Disturbance of migration patterns of antelope due to new fencing.
- Fencing using federal guidelines (wildlife) to facilitate passage of big game such as deer and antelope when moving from one habitat type to another. Under- and/or overpasses should also be considered.
- Changes to the capacity of the river floodplain due to construction of the rail grade within/across the Cheyenne River floodplain and potential to alter natural erosion patterns along channel (i.e. increased bank erosion due to diminished floodplain capacity). The current mapping available isn't detailed enough to determine scope of this issue.
- Direct effects to stream/river channels (across Cheyenne and the many tributaries to be crossed) due to bridge construction/reconstruction, or to re-routing channels near rail grade. Effects of bank stabilization necessary to protect grades.
- Sediment and erosion control during construction and in the long term to protect water quality in all affected streams/ivers. Runoff routing.
- Potential effects to fish migration in tributary streams due to construction of crossings that may increase flow velocities, or in the long term cause changes in the channel bed elevations or cause physical obstructions to migrating fisheries.
- Disruption of aesthetics and serenity of a tranquil and virtually undisturbed river valley from Wasta south for 66 miles.

State Endangered, Threatened and Rare Species

Interior Least Terns: This federal and state endangered species is a fairly common and regular nesting bird on sand/gravel bars of the Cheyenne River, primarily downstream from the Bridge area. Diesel fuel spills on the floodplain or in the river may lead to direct mortality or cause abandonment of nesting areas.

Sturgeon Chub: A candidate for federal listing and a state threatened fish, known to occur in the Cheyenne River. Diesel spills and pollution from trains, rail lines, and maintenance work (erosion from ties, oil and fuel leaks from trains, use of herbicides along the ROW, and other potential pollution sources) may have a cumulative effect on this and other fishes of the Cheyenne River.

Plains Topminnow: A rare species (formerly a state threatened species) is known to occur in the Cheyenne River and tributaries in the project area (see above comments).

Bald Eagle: A concentration of this federally threatened and state endangered species is known to winter along the Cheyenne River below Angostura Reservoir. There is one bald eagle nest on the Belle Fourche River and more nests can be expected along other South Dakota river corridors in the coming years. Continual disturbance from trains will probably eliminate this stretch of the Cheyenne River as potential nesting habitat. Pollution could have an impact on food sources and possibly bioaccumulate in the food chain.

Spiny Soft-shell Turtle: This species is considered rare in SD, but has been removed from the state T & E list, in part because it is abundant along the Cheyenne River, and also because it is now known to occur along other streams and rivers in eastern South Dakota. The same concerns regarding potential pollution and contaminant spills apply to this species.

Swift Fox: This state-threatened species is found in the project area. They are vulnerable to vehicular traffic and therefore to train traffic as well.

Black-footed ferret: This state and federally listed endangered species has been introduced into the Conata Basin/Badlands area located within portions of Badlands National Park and Buffalo Gap National Grassland. If prairie dog towns are located within the project area, adverse effects to black-footed ferrets and to the potential for colonization of these towns by ferrets must be evaluated.

Note that because detailed surveys of much, if not most of the project area have not been completed, other rare species may occur in the area. As indicated above, it is our view that additional field survey work may be necessary to completely evaluate potential adverse effects to rare species.

Recreation

Farm Island State Recreation Area is located on land leased from the US Army Corps of Engineers a few miles east of Pierre. This recreation area has an annual total visitation of over 180,000. Portions of the campground facilities are located less than 300 yards from the DM&E track. Increased train traffic will significantly alter the quality of camping experience within this recreation area. Additionally, the area is accessed by a single road, which crosses the tracks within 30 yards of SD Rt. 34. Significantly increased train traffic will result in traffic and safety hazards when flow of visitors in and out of the recreation area is disrupted. Such problems are worsened due to the many vehicles trailing boats and camper trailers. Blocked inflow traffic would be backed onto the highway during the high use season.

The projected volume of train traffic would also destroy the quality of outdoor recreational experience currently enjoyed by people canoeing and camping along the Cheyenne River south of Wasta. Potential growth of such recreational use of the Cheyenne River will likely be diminished as result of the proposed project (i.e. loss of recreational value of a public resource).

Alternative Routes

It is particularly troubling to GF&P that the set of project alternatives currently under consideration does not include the use of existing DM&E rail line from south of Smithtwick, north to Rapid City, and then east to Wasta. Use of this route would keep new construction to an absolute minimum and would significantly reduce environmental impacts related to the project. We believe more information/evaluation of this route is necessary at this stage in the EIS process to better assure that the least environmentally damaging alternatives are completely explored. A by-pass south of Rapid City should be included in this evaluation. A similar evaluation (from an environmental perspective) of the existing DM&E route north of the Black Hills should also be conducted during the formal EIS process. Elimination of these alternatives prior to the initiation of the formal EIS process is premature.

Environment and Natural Resources: Contact Dave Ryan 605-773-5617

Attached is a list of the department's databases that may be of assistance to the Surface Transportation Board (STB) and its environmental consultant during the development of the DM&E Environmental Impact Statement. The information provided has been grouped by program and identifies the name of the database, a DENR contact, and a short description of the type of information contained. Not all of the databases identified will be used by the STB or its consultant but we have tried to identify all that are available.

The department has also been contacted about several issues that should be considered by the STB. The first is the issue of coal dust from the increase number of trains and its effect on air quality. Several letters have been received by the Air Quality Program and the department would like to see this issue addressed during the EIS process. A second concern has to do with potential impact of construction and operation of the railroad on previous uranium mine and milling sites in southwestern South Dakota. The department has not had an opportunity to review all the proposed routes in enough detail as yet to know if the project will impact these sites, but does believe these sites should be identified during the EIS process. A third issue

C&A - DENR Contact - Mike Erickson 605-773-4201

This is a foxpro database used within DENR to track asphalt and rock crusher permits in South Dakota. The data contained within this database is similar to the sources database in access.

Program: Drinking Water

Systems Database - Rob Kittay 605-773-4208

The systems database contains information concerning the classification of public water systems and the population of the public water systems upon which some sampling frequencies are based. It also contains information regarding contact people, last sanitary survey date and whether the water system uses groundwater or surface water or some combination.

Sources Database - Rob Kittay 605-773-4208

The source/facility database outlines each water source and each key item associated with the water system such as treatment plants, storage reservoirs and pump houses. Also included: well information (depth, casing, diameter, gpm, date built) or surface source information, aquifer data, location, and treatment process.

Program: Geological Survey

Lithology Database - Tim Cowman 605-677-6151

The lithology database contains lithologic descriptions for test holes and wells. The information includes location, elevations, well construction information, aquifer, and management units.

Groundwater Quality Database - Tim Cowman 605-677-6151

The database contains results of water quality sample taken from groundwater monitoring wells. Type of data includes inorganic, organic, and, radionuclide parameters.

Program: Ground Water

Spills/Clean - Mike Pochop 605-773-6719

The Ground Water Quality Program maintains a database of reported spills and releases of regulated substances. Information includes all petroleum, agricultural and industrial chemical spills reported to DENR. Additional information includes: location, substance, responsible party, amount released, status of file, case reviewer, impacts of the release, and other pertinent information.

Underground Injection Control/Wastewater Treatment Facility/Animal Waste Management System Databases - Tom Brandner 605-773-3296

The Underground Injection Control data base contains information about wells used to accept waste from oil field production activities or used to enhance oil recovery. It includes information about location, area geology and aquifer, well construction, injection pressures and volumes, and information about other wells in the vicinity. The Wastewater Treatment Facility data base includes information primarily about municipal wastewater treatment

that has been brought to the department's attention concerns impacts that the proposed expansion and upgrades may have on natural drainage and water rights. Many people rely on natural drainage to fill stock dams or to supply flood irrigation waters and these concerns should be addressed during the development of the EIS and through any potential design of the project.

Lastly, the department works closely with two land managers for federal parks in areas surrounding the proposed expansion lines in southwestern South Dakota and recommends that these managers be contacted and involved in the EIS scoping and drafting process. These managers are William Supermauth from the Badlands National Park (phone: 605-433-5361) and Jim Taylor from Wind Cave National Park (phone: 605-745-1157).

Additional comments concerning the potential scope of the STB's EIS will be developed and forwarded to you for inclusion in a comment letter to the STB at a latter date. The information here is in response to the STB's request for information and includes only a few issues that were identifiable in the time permitted. If you have any questions about the information provided, please give me a call.

DENR Databases

Program: Air Quality

AFS - DENR Contact - Brian Gustafson 605-773-4213

AFS is subset of the national EPA database (AIRS) containing all information on permitted Title V sources in SD. The database contains inspection, pollutant, emissions, and permit tracking information. The database is maintained on the mainframe and an account is required to access the information. The information contained in this database may be available through EPA's AIRSweb or Envirofacts websites for the general public to browse.

Sources - DENR Contact - Brian Gustafson 605-773-4213

This is an access database used within DENR to track all permitted facilities (Title V and minor sources) in South Dakota. The database contains permit contact information, facility location, permit number, county, type of permit, issue date, expiration date of the permit, and last inspection data.

AQS - DENR Contact - Brad Schultz 605-773-6038

AQS is subset of the National EPA database (AIRS) that houses all of the air quality monitoring data received in South Dakota. The database contains monitoring data including weather conditions and particulate matter concentration levels in various locations throughout the state. The data included in this database is stored and accessed similarly to the data contained in the AFS database.

facilities. This includes location, system type and size, aquifer, ground water monitoring requirements and ground water quality information. The animal waste management system data base deals with feedlot facilities that were required to submit P&S for department approval. It includes location, type and number of animals fed, type and size of storage facility, aquifer information, ground water monitoring requirements and ground water quality information. The UIC data base is basically run by the Oil and Gas program people in Rapid City, and the WWTF & Feedlot data bases are still incomplete and preliminary. They just include some additional information related to ground water concerns, whereas the main data bases for these facilities are in the surface water program.

Underground and Above Ground Storage Tanks Database - Chris Hanson 605-773-3475

The tanks database contains information on above ground and underground storage tanks located throughout the state. Information includes: facility, location, status, material, and construction of tank, type and amount of substance stored.

Title III / Tier II Database - LeeAnn Smith 605-773-5048

The Title III database contains information on Title III reporting facilities. Information includes: the facility name, SIC code, location, owner, chemicals stored, amounts stored, and other safety information.

Formerly Used Defense Sites (FUDS) - Mark Lawrensen 605-773-5868

The department maintains a list of 52 Formerly Used Defense (FUD) sites in South Dakota. Detailed hard copy records of the sites and their status are maintained at the Ground-Water Quality Program office in Pierre. Pertinent FUD site information has been placed in a Microsoft Excel spread sheet and in a Microsoft Access database. A table showing FUD site name, location, and environmental problems are available upon request. The detailed records can also be copied and sent out upon request.

The U.S. Army Corps of Engineers is the federal agency performing the assessment and cleanup of the FUD sites. The names and telephone numbers of the individuals performing work at these sites can be provided if necessary.

Program: Watershed Protection

Watershed Protection Database - Gene Sweeney 605-773-4057

The watershed protection database has information on 112 lakes that are sampled for the South Dakota Statewide Lake Assessment. The database information includes location, physical characteristics (maximum depth, length of shoreline, etc.), water quality information (chemical and biological), and chlorophyll a concentrations.

Program: Surface Water

Surface Water Database - Kelli Buscher 605-773-5085

The database identifies all Surface Water Discharge permittees in the state. This is a federal database developed by EPA and maintained by the individual states. It contains information on

the location of wastewater treatment facilities, the permit limits, compliance information, and other information pertaining to the Surface Water Discharge and NPDES permitting program.

Animal Feedlot Database - Kelli Buscher 605-773-5085

The database identifies the permit applications we have received for coverage under the swine or livestock general permits. It contains information on the producer, feedlot location (including legal description and lat/long), consultant, and other appropriate data. This database shows the location of all feedlots that have requested approval of plans and specifications over the last 2 years. As part of this database, a table has been developed showing information on some existing feedlots. This portion of the database is not complete or up-to-date, but provides some limited information on other feedlots in the state.

Storm Water Permits - Norma Job 605-773-4040

The storm water permit database contains owner and facility location information, type of permit (construction or industrial) and activity. Included in the database are owner, operator, SIC code, legal location, issued and terminated permits and provides some limited inspection information.

Program: Minerals & Mining

Mining License Database - Debra Burtis 605-773-4201

The mining license database contains information on mine operators who mine for construction aggregate, pegmatite minerals, limestone, iron ore, sand, gypsum and shale. The data references the type of operation licensed, license activity, production figures, acreage's affected and reclaimed, inspection information, and reclamation bonds held by the department.

Exploration/Mine Permit Database - Patty Bruckner 605-773-4201

The exploration database contains information pertinent to permitted large and small scale mine permits as well as permitted exploration operations. The data references the type of operation permitted; permit activity, production figures, acreage's affected and reclaimed, inspection information, and reclamation bonds held by the department.

Oil & Gas Database - Gerald McGilvary 605-773-5559

The Oil & Gas Program maintains a data base in Fox Pro containing all oil and gas test holes drilled. Information consists of geologic information, drill stem tests, core analysis, current status of wells, operator information, well completion reports, plugging reports, surface owners. Another data base contains injection information to include pressure. Oil, Gas and Water production and injection reports are maintained in Excel.

Program: Solid Waste Management

Solid Waste Database - Rassool Ahadi 605-773-4593

The Waste Management Program's database contains information on all active and closed solid waste facilities. Information includes name, type, type of waste accepted, location, address, county, contact person, phone number and other pertinent information for the facility.

Program: Water Rights

Water Rights and Water Levels Database - Mark Rath 605-773-3352

The water rights database contains water permit/right information for all existing water rights. This information includes: water right holder, diversion rate, water levels, diversion point, well information and irrigation use information.

Lakes Database - Mark Rath 605-773-3352

The Lakelevel database contains bi-annual water elevation measurements for approximately 150 natural lakes in South Dakota. Measurements were first taken in 1983 and are continuous since. The database also contains outlet and ordinary high watermark information if these have been set during legal proceedings.

Observation Wells - Mark Rath 605-773-3552

The observation well database contains water level readings for over 1500 observation wells maintained in the state. These observation wells have been constructed into several different aquifers. Water levels are collected monthly from September-April and every other week the remainder of the year. The purpose of the data is to record water level fluctuation for management purposes.

Sincerely,

Roxanne R. Rice
Roxanne R. Rice, Director
Division of Fiscal and Public Assistance

RRR:sra

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STATE OF SOUTH DAKOTA
WILLIAM J. JANKLOW, GOVERNOR

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Surface Transportation Board
Section of Environmental Analysis

Finance Docket #33407, Dakota, Minnesota & Eastern Railroad Corporation Powder River Basin Expansion Project

Response from State of South Dakota regarding the Draft Scope of Study for the Environmental Impact Study

The purpose of this document is to provide comments from various agencies of the State of South Dakota on the draft Scope of Study prepared by the Surface Transportation Board's Section of Environmental Analysis. The State strongly urges that the environmental impact statement take into consideration the impacts of upgrading the current line as well as any new construction, as the State will be impacted tremendously if this proposal is approved.

MISCELLANEOUS SCOPE ISSUES

- It is the opinion of the State that the EIS needs to include the proposed passing tracks that will have to be constructed along the old and the new routes and determine their impact on crossings, safety, access, etc.
- EIS should evaluate all options, including new construction, upgrade of the existing route and no-construction.
- Unavoidable environmental impacts should be described in the EIS.
- Time should be spent reviewing data submitted by the DM&E regarding projections, operations, etc. to verify accuracy in calculations and assumptions used in the application.
- EIS should take into consideration other possible alternative modes to provide coal to the east and their feasibility in comparison to the DM&E proposal.

EXECUTIVE OFFICE
STATE CAPITOL
500 EAST CAPITOL
PIERRE, SOUTH DAKOTA
57501-5070
605-773-3212

- Alternative Routes: it is requested that the EIS take into consideration routes that were discarded by the DM&E or were not even considered. This would include use of existing DM&E rail line from south of Smithwick, north to Rapid City, and then east to Wasta, as well as the existing DM&E route north of the Black Hills.
- The EIS should examine potential by-passes around Class I cities as part of the EIS process.
- Consideration needs to be made for the SD state law which requires the Department of Transportation to grant a permit for the construction if it is deemed desirable and there is a probability that it will be built.

LAND USE

- Analysis of uses of land through which new construction will occur to determine if the new construction will destroy the current use of the land (including farming, ranching, etc.).
- Analysis of bisected parcels, the railroad should be required to pay for parcels that become unusable because they are too small.
- Analysis of the affect on future land use near to the new or existing trackage. Will this proposal decrease the ability to use the land for future homes/business/farming? Mitigation measures should include compensation to tenants.
- Analysis on parcels rendered un-usable due to decrease or elimination of access. Mitigation should include compensation.
- Analysis of the loss of livestock due to the operation of the new line. Mitigation should include compensation for losses.
- Review of special land use designation, such as industrial, government owned, natural, recreational, or scenic areas near the right of way of the new construction as well as the existing line, and how these will be affected. Some of the natural areas include the Badlands National Park and Wind Cave National Park. In addition, the Cheyenne River corridor is considered one of the most pristine river corridors remaining in western South Dakota. Only one percent of western South Dakota outside of the Black Hills is covered by woodland riverine habitat. Therefore, this habitat type is of great importance to both game and non-game species. The Cheyenne River corridor also has a high probability for pre-historic and historic cultural resources.

SOCIO-ECONOMIC

- Analysis of the economic impacts due to newly created jobs resulting from the increased traffic as well as the new train crew terminal facilities.
- Analysis of the negative economic impacts (on tourism, etc.) from increased train traffic through cities, including the capital of South Dakota, Pierre.
- Analysis of the number of residences and community-oriented facilities within and nearby the rights-of-way of all routes, including the existing route is necessary to fully determine the impacts on these properties regarding property values decreasing and the subsequent impact on local taxes.

WATER RESOURCES

- Analysis of effect of spills from refueling, and maintenance of construction equipment as well as train operating equipment on surface water wells, aquifers, etc. This will require an inventory of the wells, and should take into consideration the permeability of the soils.
- Affect of construction and operation on drainage and water quality as a result of soil erosion and improperly designed drainage structures. Consultation with appropriate agencies regarding the adequacy of rail design for accommodating surface drainage must occur and Best Management Practices (BMP) for sediment and erosion control should be incorporated into the planning, design, and construction of this project.
- Analysis of the effect on water quality affected by right of way maintenance procedures if herbicides applied during vegetation control were to enter a waterway.
- Assurance must be made that any route that is approved does not alter the prevailing hydrology so as to impair any wetland's functions and values.
- Analysis and recommendations regarding protection of wetlands during construction.
- Analysis of what provisions should be used for construction staging areas, obtaining any needed fill material, and disposing of excavated material on non-wetland sites, and for disposing of waste material generated during construction in an environmentally sensitive manner.
- Identification of flood plains in the proposed or existing routes and what affect this would have on the operations and construction of the railroad.

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- Analysis of the effect of railline fencing which may concentrate livestock at watering spots with resultant impact and environmental damage much greater than if livestock allowed to water freely and dispersed along Cheyenne River ecosystem.
- Railline berming along a river system creates an obstruction to the natural hydrology of a river.
- Effect on all tributary access to the Cheyenne River.
- Changes to the capacity of the river flood plain due to construction of the rail grade within/across the Cheyenne River flood plain and potential to alter natural erosion patterns along channel (i.e. increased bank erosion due to diminished flood plain capacity).
- Direct effects to stream/river channels (across Cheyenne and the many tributaries to be crossed) due to bridge construction/reconstruction, or to re-routing channels near rail grade. Effects of bank stabilization necessary to protect grades.
- Analysis of the effect on construction dewatering. Mitigation should include obtaining of the proper permits.
- Identification and analysis of impacted water bodies which are classified by the South Dakota Surface Water Quality Standards and Uses Assigned to Streams and Lakes. Based on the beneficial uses (which must be identified) for each water body encountered specific total suspended solids standard must be met to ensure that the water quality standards are not violated. The beneficial uses classifications used in South Dakota are as follows:
 - Domestic water supply waters;
 - Coldwater permanent fish life propagation waters;
 - Coldwater marginal fish life propagation waters;
 - Warmwater permanent fish life propagation waters;
 - Warmwater semi-permanent fish life propagation waters;
 - Warmwater marginal fish life propagation waters;
 - Immersion recreation waters;
 - Limited contact recreation waters;

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- The EIS should include any locations where stream channels, including dry channels, may be adversely impacted by construction on the new track route and existing track route. The EIS should include measures to prevent or deal with any stage, level or flow issues. Such issues would include whether water rights or water for livestock watering will be adversely impacted.
- Describe the existing surface and ground water resources within the project area including, but not limited to, aquifers, lakes, rivers, streams, stock ponds, wetlands, and flood plains. Also describe the potential impacts on these resources resulting from the construction and operation of rail line especially in regards to federal and state water quality standards.
- Describe measures and/or required permits for both the proposed rail line construction in regard to aquifers, wetlands, stream crossings, water quality, and erosion control.
- Identification of storage tank locations, whether they will be disturbed and the resulting environmental impact. Identification of where new storage tanks will be located and the resulting environmental impact.
- Analysis and identification of existing contaminated soil and ground water. The Ground-Water Quality Program is aware of existing contamination within the DM&E operational area and recommends evaluation of these areas to determine impact of the railroad upgrades on surrounding non-contaminated areas.
- Analysis on impact on watershed protection and non-point sources: the primary concerns are potential impacts to the Cheyenne River ecosystem during and following the proposed construction of a new rail line from near the Angostura Reservoir to the existing line at Wasta, South Dakota. Analysis should include:
 - Impact to riparian wetlands, wetland vegetation, resident wildlife, and water quality of the Cheyenne River ecosystem.
 - Impact of stream bank erosion and siltation to the Cheyenne River.
 - Resultant impact to water quality from construction activity of railbed and construction roads: concern of particulate pollution.
 - Impact of fugitive coal dust and railcar deposits (oil, grease, other lubricants) to river ecosystem wetlands, vegetation, and Cheyenne River waters.
 - Potential threat of accidental spills of railed material to waters and ecosystem of the Cheyenne River.

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- Wildlife propagation and stock watering waters;
- Irrigation waters; and
- Commerce and industry water.

BIOLOGICAL RESOURCES

- Analysis on affects of removal of vegetation and associated wildlife habitat, and threatened or endangered species.
- Affects of bisecting continuous grasslands, forests, etc. on species of wildlife that depend on continuous habitat for maintenance of self-sustaining populations.
- Affect of displacement of certain wildlife to quieter areas due to new or increased train traffic and associated noise.
- Determination of existing wildlife along the railroad corridor, including endangered or unique species and what affect the railroad will have on survival.
 - Interior Least Terns: This federal and state endangered species is a fairly common and regular nesting bird on sand/gravel bars of the Cheyenne River, primarily downstream from the Bridger area. Diesel fuel spills on the flood plain or in the river may lead to direct mortality or cause abandonment of nesting areas.
 - Sturgeon Chub: A candidate for federal listing and a state threatened fish, known to occur in the Cheyenne River. Diesel fuel spills and pollution from trains, rail lines, and maintenance work (creosote from ties, oil and fuel leaks from trains, use of herbicides along the ROW, and other potential pollution sources) may have a cumulative effect on this and other fishes of the Cheyenne River.
 - Plains Topminnow: A rare species (formerly a state threatened species) is known to occur in the Cheyenne River and tributaries in the project area.
 - Bald Eagle: A concentration of this federally threatened and state endangered species is known to winter along the Cheyenne River below Angostura Reservoir. There is one bald eagle nest on the Belle Fourche River and more nests can be expected along other South Dakota river corridors in the coming years. Continual disturbance from trains will probably eliminate this stretch of the Cheyenne River as potential nesting habitat. Pollution could have an impact on food sources and possibly bioaccumulate in the food chain.

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- Spiny Soft-shell Turtle: This species is considered rare in SD, but has been removed from the state T & E list, in part because it is abundant along the Cheyenne River, and also because it is now known to occur along other streams and rivers in eastern South Dakota. The same concerns regarding potential pollution and contaminant spills apply to this species.
- Swift Fox: This state-threatened species is found in the project area. They are vulnerable to vehicular traffic and therefore to train traffic as well.
- Black-footed ferret: This state and federally listed endangered species has been introduced into the Conata Basin/Badlands area located within portions of Badlands National Park and Buffalo Gap National Grassland. If prairie dog towns are located within the project area, adverse effects to black-footed ferrets and to the potential for colonization of these towns by ferrets must be evaluated.

(Note that because detailed surveys of much, if not most of the project area have not been completed, other rare species may occur in the area. As indicated above, it is our view that additional field survey work may be necessary to completely evaluate potential adverse effects to rare species.)

- Analysis of the impacts on riparian forest and woody draw habitats, including direct removal and fragmentation of these habitat types.
- Analysis of the impacts to riparian oxbow wetlands and measures to avoid, minimize and mitigate impacts.
- Analysis of the introduction of noxious weeds resulting from soil disturbance.
- Potential effects to fish migration in tributary streams due to construction of crossings that may increase flow velocities, or in the long term cause changes in the channel bed elevations or cause physical obstructions to migrating fisheries.
- Disturbance of migration patterns of antelope due to new fencing.
- Disruption of wildlife movement across the rail line during daily movement from one habitat type to another, or during seasonal migration.
- Impacts to antelope and deer wintering areas.
- Analysis of the disruption, or fragmentation of established territories and routines of secretive species such as the mountain lion (a state threatened species) and bobcat.

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- Direct wildlife losses due to being hit by trains.
- Adverse effects to nesting birds, including raptors, by disturbance and disruption due to train traffic.
- Effects to fish and wildlife from coal dust (e.g. environmental contaminants in coal dust, uptake by vegetation, consumption of vegetation by wildlife, incidental direct consumption of dust/soils by wildlife).
- Release of fuel and/or other hazardous materials into the Cheyenne River and/or tributaries and effects to aquatic communities.
- Increased train traffic across a South Dakota Game, Fish and Parks owned Game Production Area located two miles south of Oral will disrupt wildlife (see above) and recreational uses (e.g. hunting, wildlife watching, etc.) of this tract of public land. Evaluation of applicability of existing easements will have to be completed.
- Analysis of the impact from increased train traffic across Lake Preston in Kingsbury County which may disrupt wildlife and recreational uses (e.g. fishing, hunting, wildlife watching, etc.) of this public meandered lake. Currently, the lake is a popular fishery, but during lower water years, the lake has significant wildlife value and can be a popular hunting area.

TRANSPORTATION/SAFETY

- Analysis of effects on transportation infrastructure
 - Requirements should be made on the railroad to ensure traffic flow is maintained (i.e., detours, etc.) on all public and private roads while crossing construction is underway.
 - Recommendations regarding the types of safety devices or grad separations needed at each crossing location, and requirements for the railroad to pay for these devices. Criteria need to be established to determine which crossings need which type of device. This criteria should include ADT, site-distance issues, access, etc. In looking at vehicular delays, the State feels strongly that all crossings with 1,000 ADT or more need to be considered. The EIS should require the DM&E to examine all of the crossings with the State or local governmental entity regarding recommended changes in crossing devices. Frequency of school bus crossings should be examined also.
 - Requirement should be made that the railroad make sure that the timing and phasing of signals is correct to keep traffic flowing at grade crossings.

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Effects of operations on delay and safety

- Analysis of current delays versus delays in future years due to the increased train traffic need to be done in each city and for each crossing. For example, if the current vehicular delay for a citizen in Pierre is 20 minutes over a 24 hour period, what will it be after the construction, and at points in the future as train flows increase.
- Analysis of current rail/highway incidents per year compared to future projections based on growth scenarios from the DM&E.
- Analysis and recommendations regarding the appropriate grade crossing and trespassing education program to be provided by the DM&E.

ENERGY AND AIR

- Recommendations need to be made to minimize air quality impacts during rail line construction. This should also include making other arrangements for dust control measures where applying oil or other chemicals would not be appropriate due to open water, wetlands, livestock, etc.
- Analysis on increased air pollution due to changes in rail operations, and traffic delays needs to be completed. Future fuel consumption by the rail operations should be analyzed and compared with current fuel consumption for this analysis.
- Analysis needs to be done to examine the affect, if any, of coal dust from passing cars on air quality. The EIS should address if there is any health concerns and if so, at what distance from the rail line and what the impact will be on the individuals.
- Visibility impact on the Badlands and Wind Cave National Parks from the construction and operation of the rail line should be addressed in the EIS.

NOISE

- Analysis of the impact of noise and vibration on land use, taking into consideration proximity of residential properties, parks, schoolyards, recreational areas, hospitals, churches, etc., where excessive noise levels would interfere with the intended use of the land. This should take into consideration increased noise over and above what already exists with the train, and the new noise levels that will interfere with community activities, conversation, sleep, listening to TV/radio, etc.
- Recommendations regarding the effect of eliminating train horn warning device on safety.

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GEOLOGY AND SOILS

- Analysis of the stability of soils over each of the proposed routes and the current route to determine feasibility of each route, and to determine if there is a potential for having to relocate portions of the existing route and what affects that will have.
- Determination and evaluation of hazardous waste sites along the new route and the existing route to determine if excavation will cause further contamination, and if so, what affects that will have on water, wetlands, trees, grasses, native plants, animals, fish, wildlife, etc. There are locations in southwestern South Dakota where dormant uranium mining and milling sites exist, and the EIS needs to determine if and how these sites will be affected.
- Determination of locations of any gas and oil wells, or producing facilities within the new and existing routes and the potential impact on them. EIS should address potential fire hazards.
- Consideration of any mining permits which may be required if mined materials are needed for construction.
- Describe the geology and soils found within the project area, including unique or problematic geologic formations or soils and prime farmland soils. Also describe the potential impacts of rail line construction and operation on unique or problematic geologic formations and prime farmland soils.

CULTURAL RESOURCES

- Analysis of impact on historic properties, including archaeological, paleontological, and historic structures. This will require a cultural resource survey to locate and identify cultural resources which could be affected on all proposed new construction routes as well as consideration of the impact on existing properties near the new line as well as the existing line.
- Analysis of the effects that the proposed action will have in the character or use of any historic properties under the National Historic Preservation Act as amended.

RECREATION

- Analysis of the effect on the noise, vibrations, and traffic delays on parks that are near the proposed and current route.

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- Farm Island State Recreation Area is located on land leased from the US Army Corps of Engineers a few miles east of Pierre. This recreation area has an annual total visitation of over 180,000. Portions of the campground facilities are located less than 300 yards from the DM&E track. Increased train traffic will significantly alter the quality of camping experience within this recreation area. Additionally, the area is accessed by a single road, which crosses the tracks within 30 yards of SD Rt. 34. Significantly increased train traffic will result in traffic and safety hazards when flow of visitors in and out of the recreation area is disrupted. Such problems are worsened due to the many vehicles trailering boats and camper trailers. Blocked inflow traffic would be backed onto the highway during the high use season.
- The projected volume of train traffic would also destroy the quality of outdoor recreational experience currently enjoyed by people canoeing and camping along the Cheyenne River south of Wasta. Potential growth of such recreational use of the Cheyenne River will likely be diminished as result of the proposed project (i.e. loss of recreational value of a public resource).
- Determination of the amount of private land that will be removed and the affect on hunters due to that.
- Identification of state parks, state commemorative areas, scenic areas, wildlife management areas and national forests within and nearby the project area and analyze affects on these areas.

OTHER

- The demolition and disposal of old buildings and other structures that are in the path of construction, not only from a solid waste disposal perspective but how they are going to determine if there is any regulated asbestos in these structures (i.e. asphalt shingles, heating ducts, boilers lines, etc.), and in relation to historical value.
- The proper disposal of treated railroad ties both during construction and upgrade projects.
- Disposal of trees and large woody shrubs.
- Disposal of construction derived waste generated by contractor operation.
- Disposal of garbage (i.e. putrescible waste) generated by workers during construction.

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Sincerely,



Dana Nelson
Special Assistant to the Governor

Enclosure

cc:

Darrell Cruca, SD Department of Agriculture
Ronald Wheeler, SD Department of Transportation
John Cooper, SD Department of Game, Fish and Parks
Karon Schaak, SD Department of Education and Cultural Affairs
Nettie Myers, SD Department of Environment and Natural Resources
Gary Viken, SD Department of Revenue
Governor's Dakota, Minnesota and Eastern Railroad Oversight Committee

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INFORMATION SOURCES

Department of Environment and Natural Resources

Contact: Dave Ryan
Department of Environment and Natural Resources
Division of Financial and Technical Assistance
523 East Capitol
Pierre, South Dakota 57501-3181
Telephone: (605) 773-4216
Fax: (605) 773-4068

Department of Transportation

Contact: Roxanne Rice, Director
Office of Railroads
Department of Transportation
700 East Broadway Avenue
Pierre, South Dakota 57501-2586
Telephone: (605) 773-3284
Fax: (605) 773-3921

Department of Game, Fish and Parks

Contact: John Kirk
Department of Game, Fish and Parks
523 East Capitol
Pierre, South Dakota 57501-3182
Telephone: (605) 773-4501
Fax: (605) 773-6245

Department of Education and Cultural Affairs

Contact: Jay D. Vogt, SHPO
Office of Historic Preservation
Cultural Heritage Center
900 Governors Drive
Pierre, South Dakota 57501-2217
Telephone: (605) 773-3458
Fax: (605) 773-6041

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COPY to the Secretary

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Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33407

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

PARTY OF RECORD MARK BARNETT
ATTORNEY GENERAL OF STATE OF SOUTH DAKOTA
COMMENTS ON DRAFT SCOPE OF STUDY
FOR THE ENVIRONMENTAL IMPACT STATEMENT

Mark Barnett, Attorney General of the State of South Dakota, Party of Record in the above matter, submits the following comments on the Draft Scope of Study for the Environmental Impact Statement (hereinafter "Draft Scope"):

Proposed Action and Alternatives:

The Draft Scope does not appear to evaluate as an alternative route, DM&E's existing rail line from Wasta, South Dakota through Rapid City, South Dakota to Oral, South Dakota. This rail line is currently operated by DM&E and would require only upgrading, rather than the new construction alternative DM&E proposes from Wasta, South Dakota to Oral, South Dakota. This alternative action should be considered in the EIS.

The Draft Scope should also include evaluation of an alternative alignment that avoids construction in the pristine Cheyenne River Valley.

Impact Categories:

In addition to the impact categories identified in the Draft Scope, Mark Barnett contends the following categories should also be evaluated:



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PROPOSED NEW CONSTRUCTION

1. Land Use: The South Dakota Department of Game, Fish & Parks operates a Game Production Area two miles south of Oral, South Dakota. The Environmental Impact Study should consider effects of the new rail line and operation of the rail facility on the wildlife and recreational uses of this tract of public land.

The preferred route runs along the edge of Angostura State Recreation Area in Fall River County. The EIS should consider the impact to this recreational resource, as well as the quality of the outdoor recreational, hunting and fishing resources along the Cheyenne River.

The EIS should also evaluate the impact DM&E's construction will have on school endowment lands managed by the Commissioner of School and Public Lands. DM&E's preferred route will cross or impact at least four parcels of school land.

2. Biological Resources: The EIS should evaluate the impact of the operation of the proposed rail facilities on the biological resources of the Cheyenne River. A number of state endangered, threatened and rare species inhabit lands along the preferred rail facilities alternative. Construction and operation of the new rail line may adversely affect these species. Along the Cheyenne River, such species include the Interior Least Tern, Sturgeon Chub, Plains Topminnow, Bald Eagle, Spiny Soft-shell Turtle, Swift Fox, and Black-footed Ferret.

3. Water Resources: The EIS should evaluate the impact of the construction and operation of the proposed rail facilities on the Cheyenne River corridor, which is considered one of the most pristine river corridors in South Dakota. Of particular concern are the impacts

3. Safety: The EIS should evaluate the impact of the increased train traffic on the rail line to public health and safety concerns in the cities affected. In Pierre, South Dakota, for example, the hospital and one of the fire stations are situated such that crossing the rail line is required more often than not; there is only one underpass allowing emergency vehicles to cross the rail line if a train is present. Few of the railroad crossing have barricades; most do not even have signal lights indicating that a train is approaching.

4. Socioeconomics: The EIS should evaluate the socioeconomic issues related to the substantial increase in train traffic as proposed by DM&E. At the present time, a number of businesses and residences exist along the rail line; the socioeconomic impacts of the proposed increase in rail line traffic on those businesses and residences should be addressed.

5. Biological Resources: Bald Eagles nest on the Missouri River near Pierre, South Dakota; countless migratory birds, including, for example, the Great Blue Heron as well as game birds, use this portion of the Missouri River during their migratory cycle. The Environmental Impact Study should also address the affect of increased train traffic on this nesting and migratory habitat. It should also address the socioeconomic and recreational impacts from loss of this habitat.

Dated and signed this 9th day of July, 1998.

MARK BARNETT
ATTORNEY GENERAL
STATE OF SOUTH DAKOTA

R. Oued
Roxanne Giedd
Assistant Attorney General
500 East Capitol Avenue
Pierre, South Dakota 57501-5070
Telephone: (605) 773-3215

of changes due to construction of the preferred alternative to riparian oxbow wetlands along the River, to the capacity of the river floodplain, and to natural erosion patterns along the channel of the Cheyenne River.

PROPOSED UPGRADE

1. Waste Issues: Construction during the proposed upgrade is highly likely to expose regulated materials such as underground storage tanks, petroleum contaminated soils, creosote and other hazardous or deleterious substances. The EIS should evaluate the environmental impacts that the wastes will have upon exposure and should address the proper disposal of the wastes.

2. Safety: The EIS should consider the multitude of environmental and safety issues involved with a large scale construction project like the proposed upgrade. Environmental issues include impacts to the air and water from the construction of the upgrade. Safety issues include those to the public and also to the workers.

INCREASED TRAFFIC ON EXISTING DM&E SYSTEM

1. Land Use: The existing rail line runs along the northern edge of the Farm Island State Recreation Area and across Lake Preston in Kingsbury County, South Dakota. The EIS should consider the impact of the increased rail line traffic on these recreational resources, including traffic and safety considerations as well as the quality of the outdoor recreational, hunting and fishing resources.

2. Vibration: The EIS should evaluate the impact of increased vibration from the proposed increase in rail traffic on historic buildings near the rail line, such as the South Dakota State Capitol Building. The EIS should also evaluate the impact of vibrations on educational, governmental, health and other public buildings.

State Senator Bernie Hunhoff
P.O. Box 175 Yankton, SD 57078
Phone 605/665-6655

July 27, 1998

Linda J. Morgan, Chairperson
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-001

Dear Ms. Morgan,

This letter is submitted in response to the extension of the deadline for public comments on the proposed expansion of the DM&E Railroad project that has been proposed for our state. It supplements a March 12, 1998 letter to you in which I urged the Surface Transportation Board to hold full hearings in South Dakota so that your agency can fully evaluate the DM&E request.

I appreciate your responsiveness to the people of South Dakota who have requested hearings and an opportunity for extensive public comment before the Surface Transportation Board on the DM&E project. It is of utmost importance to have a full public airing of the proposal involving affected citizens throughout the state, in light of the magnitude of the DM & E project.

An improved rail system could serve vital interests in South Dakota. New jobs created during the construction phase of the project and expanded employment opportunities for overall operation and maintenance of the expanded line will benefit our state's economy. Potentially, this project could help transport our agricultural products and create competition. However, it does not appear that DM&E has adequately documented the benefits of the project to South Dakota people, or provided much by way of assurances or guarantees of how they intend to offset the costs.

I continue to have serious concerns over safety issues, environmental and economic ramifications, quality of life impacts, costs to communities and landowners. I outlined some of these concerns in my March 12 letter. Before the Surface Transportation Board takes action on the DM&E's request, I urge you to ensure that the following issues are addressed:

- 1) There must be a clear understanding that the railroad will serve more than the corporate interests of Wyoming coal and eastern power companies. The volume of coal trains heading east will have top priority, but what guarantees will farmers have that the rail line will be used to move our state's grain and processed agricultural products in a timely and affordable manner?
- 2) The DM&E expansion must respect the property rights of those living near the proposed route. DM&E has not adequately assessed the impacts of this project on homeowners living along the route, or the farmers and ranchers and others with businesses along the route. DM & E must demonstrate how they intend to compensate landowners for the use of their property, and how they will mitigate reduced land values due to the heavy train traffic. This should include an assessment of the impact of this project on state and federal land impacted by the project as well, and a plan to ensure that property held in the public trust indeed is protected.

CHIEF OF BUREAU
AUG 11 1 58 PM '98
SURFACE TRANSPORTATION BOARD

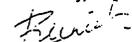
Linda J. Morgan
July 27, 1998
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At the outset, DM&E officials have suggested that they wouldn't need eminent domain. But when I and others drafted a bill in the 1998 legislative session that would have called for legislative approval prior to the use of eminent domain by railroads, we could get no support from DM & E. We felt that process would provide for public input and enable us to get the answers to people's questions.

- 3) Traffic safety is of major importance. Year after year in the South Dakota legislature, bills have been proposed to require that reflector tape be affixed on railcars to avoid accidents at unmarked or poorly lit railroad crossings. I am aware of many accidents and some fatalities at unmarked or poorly lit rail crossings, because trains are difficult to see at night. Increased rail traffic of the magnitude proposed by DM&E spells disaster, unless the company presents a plan for reflectorization and rail safety at crossings. The plan should indicate how this will be paid. DM&E should not place the costs of better crossing lights or signals on already burdened local taxpayers. Other rail safety issues such as traffic control at major intersections have yet to be addressed.
- 4) The environmental impact of the proposed route must be fully assessed and responsible alternatives explored, to avoid harm to sensitive areas that have cultural, historic, or environmental significance. The impact of the route on tourism, agriculture and other essential industries should be evaluated by considering the obvious and hidden costs and benefits.
- 5) DM & E should lay their cards on the table regarding any plans they have to import materials that, time after time, have been opposed by South Dakota voters. In the last two decades, South Dakota voters have opposed proposals for the importation of sewage ash, nuclear waste and garbage. South Dakotans need assurances that DM&E's plans don't include these economic and environmental failures.

I appreciate the opportunity to comment.

Sincerely,



Bernie Hunhoff



STATE OF SOUTH DAKOTA
WILLIAM J. JANKLOW, GOVERNOR

August 28, 1998

Mr. Vernon A. Williams, Secretary
Office of the Secretary
Case Control Branch
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

ATTN: STB Finance Docket No. 33407

Dear Mr. Williams:

Pursuant to the procedural schedule adopted by the Surface Transportation Board in May, I am submitting the following final comments, information and evidence to the Surface Transportation Board on behalf of the Office of the Governor for the State of South Dakota, and the Governor's Dakota, Minnesota and Eastern Railroad Oversight Committee on the pending application submitted by the Dakota, Minnesota and Eastern Railroad to expand and upgrade its railroad line between the Powder River coal region in Wyoming and the Mississippi River in Minnesota.

Ten copies of these comments are included in this mailing, as well as notification to all parties of record, filed with the Surface Transportation Board.

It is my understanding that comments on the transportation aspects submitted on June 11, 1998, and comments, information and evidence on the transportation aspects submitted in this mailing constitute our comments or arguments on the transportation aspects of the application, but do not represent this office's position on any environmental issues.

1. There continues to be a discrepancy in the interpretation of the authority of the Surface Transportation Board, which has yet to be addressed by the Board or its legal staff. The Dakota, Minnesota and Eastern Railroad stated in its application that the extent of the board's authority is the consideration of the new construction in Wyoming, South Dakota and the bypasses in Minnesota. However, it is clear that the Environmental Analysis Section is considering impacts throughout the entire route which trains will travel from the Powder River region in Wyoming to the Mississippi River, based on the location of its scoping meetings and the subject matter to be considered.

EXECUTIVE OFFICE

STATE CAPITOL
500 EAST CAPITOL
PIERRE, SOUTH DAKOTA
57501-5070
605-773-3212

Mr. Vernon A. Williams
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This unresolved discrepancy in the interpretation of the board's authority should be clarified immediately, or at a minimum should be addressed in the board's written decision, expected by November 3, 1998. By these comments, this office reserves its right and states its continued concern over this unresolved issue to seek legal injunctive relief with the federal courts, if the Surface Transportation Board refuses to address this issue, or does not adequately address the concerns of this office in its November 3, 1998, ruling.

This office offers as evidence in support of its concern, the following:

- A: A March 1998 press clipping from the Brookings Register, quoting an anonymous attorney for the Surface Transportation Board as saying, "The people of Brookings could raise the argument . . . that yes, it is an improvement, but it's so much a part of the major construction project out in the western part of the state, it should be considered in the (STB) construction application." The anonymous attorney continued by telling the news reporter that it was a "threshold issue," and the improvements were an essential part of the new construction. She said the Surface Transportation Board would not bring the issue up.

A discussion with the news reporter (Molly Miron), revealed the contact was initiated by the reporter but was not a pointed conversation on the legal aspects of the DM&E proposal, but rather an information gathering effort for background for future news stories. During that conversation, Miron characterized the discussion on the scope of the STB's authority as "thinking out loud" and did not suggest it was a well thought out legal opinion. However, the mere fact that the issue was discussed and the above suggestion surfaced begs the question as to whether there is room for such an interpretation.

- B. A previous decision (*City of Detroit v. Canadian National Railroad*) of the Interstate Commerce Commission (ICC), the forerunner of the Surface Transportation Board, reflected a minority opinion as to the implications for upgrading railroad tracks and future board decisions if the issue of constructing a new tunnel between Fort Huron, Michigan and Sarnia, Ontario was dismissed for lack of jurisdiction by the ICC. In that dissenting opinion, Vice Chairman Simmons stated, . . . the majority has substantially revised the Commission's decades-old policy and interpretation of § 10901 with respect to construction of rail lines. Besides being inconsistent with previous case law, the interpretation of the statute invoked by the majority carries the risk that future projects which have the potential to substantially affect competition and environment may lack any serious federal scrutiny.

Mr. Vernon A. Williams
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Further, in the case of Big Sandy & C.R. Co. Construction, 175 I.C.C. at 288, where the ICC did take jurisdiction, the project involved replacing existing track and facilities (just as the DM&E is proposing on the upgrade of their existing track) in order to accommodate volumes of new traffic (the coal trains from the Powder River Basin). The ICC concluded that the upgrade in Big Sandy provided new traffic for the carrier.

- C. Finally, by the admission of DM&E Railroad President Kevin Schieffer, the construction and the upgrade of the railroad will construct "a new class one railroad from one end to the other," and will build a railroad that has not been seen in this country for 100 years.
2. This office continues to point out to the Surface Transportation Board that approximately two-thirds of the cost to expand and upgrade the rail line is for the upgrade of the existing track. It is impossible to consider the economics of the project without considering the upgrade as an integral part of the project's feasibility. If the upgrade does not occur, the volume of train traffic and the speed with which trains could travel would destroy the economics of the project. Consequently, it is the position of the Governor's Office that the project and subsequently the question cannot be divided. The entirety of the project must be considered by the Surface Transportation Board in order to evaluate accurately and adequately the financial ability of the DM&E to finance, build and operate the line.

The Governor's Office further requests that the Surface Transportation Board specifically respond to this comment, either prior to or as part of its November 3, 1998, decision.
3. There continues to be legitimate questions as to the ability of the DM&E Railroad to finance the project. Previously, the DM&E has turned to the State of South Dakota and the South Dakota Railroad Authority for \$20 million in revenue bonds for the repair and upgrade of just 100 miles of track. The conditions of the bond issue include a financial ratio covenant regarding the Indenture of Trust between the railroad authority and the First National Bank in Brookings, South Dakota. DM&E has been in violation of that ratio covenant for the last two years. Consequently, the current financial condition of the DM&E Railroad is a point of concern for the State of South Dakota and the South Dakota Railroad Authority. The failure of DM&E to maintain that ratio covenant raises the question of the ability of the company to retire the bonds and to finance such a massive project as it describes in its application.

It is clear the DM&E does not currently have the cash or equity to finance such a massive project. Consequently, additional capital or equity partners must be obtained.

4. As this office previously pointed out, the DM&E Railroad enjoys a property tax credit in the State of South Dakota, which has been the subject of political and legislative review for the past several years. That tax credit is based on the gross tonnage of products shipped on a line, and it provides a 100 percent tax credit for expenditures related to improving or upgrading the condition of the railroad tracks. Further, that credit may be extended over a three year period.

The continued tax credit is by no means a certainty, particularly when the company is considering an expansion and upgrade of the rail line as proposed by the DM&E. Continued pressure to reduce or eliminate that tax credit could result in the railroad losing its preferred status, causing financial burden on the railroad, by eliminating that credit for expenditures after a date certain.

It is unclear what impact the potential loss of this tax credit may have on the railroad, but it would clearly impact the cash flow of the company. As an example, if DM&E spent \$30 million to upgrade tracks in a given county, and its tax liability for the year was \$1 million, they would pay no tax for that year. The \$30 million expenditure can be extended over the next two years, therefore allowing the railroad to enjoy a tax benefit in future years, up to the amount expended.

Once the first coal train rolls down the track, the gross tonnage will eliminate the credit for future expenditures, but existing credits are still applied for the three-year period. Consequently, the State of South Dakota could see a delayed windfall of property taxes from the construction, and DM&E could receive a cash-flow windfall for the taxes it would otherwise owe.

5. The ownership and the operation of the DM&E Railroad are also points of interest to this office. The current owners are seeking an improved return on their investment for a railroad, which is currently running at a very modest profit. Its future operation, without the improvements outlined in the application and the increased train traffic and revenue, is in question. It has been widely speculated that the application to the Surface Transportation Board, and the application's potential approval are merely an attempt to make the railroad an attractive salable property. The current owners have not desired this suggestion and have, in fact, indicated they cannot construct this project with their own resources.

The commitment of the current owners to retain actual ownership and operate the line, should it be approved and eventually built, is in doubt. This office requests, if the application is approved, that the Surface Transportation Board include stipulations for the current owners

neither has appeared, nor is either railroad a party of record to the Surface Transportation Board process.

However, in 1997, the entire coal production in Wyoming amounted to 271 million tons. DM&E is projecting, at full operation, 100 million tons of coal to be shipped on its line. That would require coal production to increase by nearly 37 percent or the volume shipped by the Burlington Northern and Union Pacific would have to be reduced. Information has been presented to question the volume of coal to be mined in the Powder River Basin, and there are questions on the amount of coal reserves in the basin. The Surface Transportation Board must be satisfied that projections for coal production in the basin are sufficient to sustain the existing shippers, as well as to provide the potential for the DM&E's projection of 100 million tons at full capacity.

9. The daily operation of numerous trains back and forth across South Dakota will require the establishment of sidings or passing tracks for east bound and west bound trains to pass. The application does not speak to the number, location, frequency or length of such stretches of track, making it impossible to determine the obstacles or the costs which the railroad may have to overcome in building such sidings. Further, the DM&E have not defined the locations of crew changing terminals. For the same reason, these locations must be revealed in order to determine the costs and DM&E's financial ability to develop these terminals. In extensive meetings with DM&E officials, the location of the passing tracks, sidings, crew changing terminals and maintenance yards remain a mystery, making full analysis of the financial implications difficult.
10. Any determination, approval, or disapproval by the Surface Transportation Board that the applicant can finance this project to construct and upgrade the proposed track is premature before the Environmental Analysis is completed. So many variables exist under the environmental review that final cost estimates are merely "shots in the dark." At an August 19, 1998, meeting of the Governor's DM&E Railroad Oversight Committee in Pierre, South Dakota, DM&E President Kevin Schieffer committed to funding the cost of grade crossings/separations. In previous discussions and submissions, he has committed to meet or exceed industry standards. On August 19, he committed to being held to a "high standard." The Surface Transportation Board must now hold the DM&E to these public comments and make the cost of safe and effective grade crossings a condition of any approval decision. Financial responsibility for construction and maintenance of right-of-way fences, noise abatement fences, or other separation barriers; installation of crossing signals or development of over-passes/under-passes; impacts of damage to existing crossings, safety, traffic and

and any potential new owners for the railroad to operate the line profitably and within a framework acceptable to the citizens of the State of South Dakota.

6. The current ownership structure of the railroad has acknowledged in public meetings it is unable to handle the financing of the proposed expansion and upgrade without a significant infusion of construction and operating capital. If the concerns of point #5 are rejected or not satisfied, the question remains as to the influence of the new investors and the role those individuals or corporations are likely to have on the construction and operation of the railroad. This office is interested in greater disclosure of the potential investors. If the application is approved, the Surface Transportation Board should require the DM&E to disclose the identity of new investors or stockholders.
7. The issue of service to existing shippers has been discussed in greater detail since the initial comments. The State of South Dakota expects the DM&E to continue to play a very significant role in the transportation of agricultural products from this state to markets. DM&E has assured shippers that agricultural products would continue to be handled on the DM&E line, and from the input which agricultural shippers have provided to the Governor's Dakota, Minnesota and Eastern Oversight Committee, it appears that shippers are generally satisfied with those commitments.

However, some projections for the number of coal trains which would eventually criss-cross South Dakota suggest scheduling additional grain trains during harvest season may still be a problem. A continued dialogue between South Dakota shippers and the DM&E Railroad is necessary to insure that the impact on current shippers is under no circumstances harmed by the transportation of coal. Committee members have questioned whether coal or grain or other products would have preference for shipping on the improved line.

The President of the DM&E has been available and forthright in his commitment to maintain a quality railroad that has value to South Dakota and its agricultural economy. Assurances from the DM&E and STB and stipulations from the STB that as a condition of the approval process for the DM&E and any successor owners, the railroad will exceed the current level of service for grain and agricultural products, as well as other products, such as, but not limited to, cement, bentonite, wood chips, clay, rock and other products.

8. This office has no reason to believe that other Powder River Basin coal shippers (Burlington Northern or Union Pacific) have grave concerns about this proposal. Both railroads have been invited to participate in the discussions of the Oversight Committee I created, but

convenience issues, and the entire range of environmental concerns still need to be established. Until cost estimates can be developed, financial ability cannot be determined. Consequently, approval of the application before these issues are clarified and financial responsibility is established is premature.

11. At the August 19, 1998, meeting of the Governor's DM&E Railroad Oversight Committee, DM&E President Kevin Schieffer described the process his company was going through to work with local officials and citizens for the development of county plans in all of the counties along the line. He explained the process was designed to make the proposal more palatable to citizens and to identify and work on items to mitigate environmental issues. Further, at the same meeting, Schieffer agreed to have all of the county plans incorporated as part of the application to the Surface Transportation Board, and make the completion of the county plans a condition of the STB's approval. Pursuant to this commitment, if the STB should approve the DM&E's application, this office insists the commitments made by the DM&E be incorporated into its decision.

By this letter, I am also informing the Surface Transportation Board that this office has served a copy of these comments on all parties of record as identified by the board on June 5, 1998. A notice of first class mailing is attached to this letter and comments.

Thank you for the opportunity to participate in this process as a party of record. If you or the board have any questions of this office or the oversight committee that I created, please feel free to contact this office at your convenience.

Sincerely,



William J. Junklow

WJJ:sln

cc: Parties of Record to the proceeding
Surface Transportation Board, Environmental Analysis Section
Laurel Selken



STATE OF SOUTH DAKOTA
WILLIAM J. JANKLOW, GOVERNOR

December 22, 1998

Mr. Stephen G. Thornhill
Burns & McDonnell
P.O. Box 419173
Kansas City, MO 64141-6173

RE: STB Finance Docket No. 33407
Dakota, Minnesota & Eastern Railroad Corporation Powder River Expansion Project

Dear Mr. Thornhill:

The South Dakota Office of Railroads served as the Central Point of Contact for the Surface Transportation Board's information requests for all state government agencies during the Environmental Scoping process for the DM&E project.

This office would respectfully request that you as third party contractor for the STB continue this process throughout the Environmental Review Process and the preparation of the Draft Environmental Impact Statement.

Please send all requests regarding any South Dakota state government agencies to:

Roxanne R. Rice, Director
Office of Railroads
700 E. Broadway Avenue
Pierre, SD 57501

The Office of Railroads will catalogue your request and forward it to the appropriate state agency. This will assure a timely and accurate response, and eliminate duplication.

This office would also request that you copy the Office of Railroads regarding additional informational requests you forward to Federal, County, Township or Municipal agencies in this state. This may also eliminate any duplicate efforts and ensure that all agencies with decision making authority or information relative to the request are involved.

Please feel free to contact me at 605-773-3212, or the South Dakota Office of Railroads at 605-773-5037 with any questions or concerns.

Sincerely,

Dana L. Nelson
Special Assistant

EXECUTIVE OFFICE
STATE CAPITOL
500 EAST CAPITOL
PIERRE, SOUTH DAKOTA
57501-5070
605-773-3212

Mr. Vernon A. Williams
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April 8, 1999

As a party of record, if this office had anticipated additional alternative filings at this stage of the proceedings, we might have submitted bypass recommendations either on behalf of or in conjunction with two affected communities in South Dakota. Instead, we anticipated that during the EIS phase, new alternatives might be considered for communities or other areas if environmental, safety, socioeconomic, or other factors suggested a more environmentally friendly route. It was also anticipated that continued negotiation with the railroad might result in the applicant reconsidering its route plan and developing an alternate. In the case of both communities in South Dakota (Brookings and Pierre), DM&E has continued to discuss bypass options. Additionally, Brookings retained a consulting engineer to develop engineering models and proposals for a bypass.

As a result, I very respectfully request an extension of time to submit bypass alternatives for consideration during the EIS phase of this process on behalf of or in conjunction with either or both communities. By this letter and by the attached "State of South Dakota's Motion for Extension of Comment Period on Final Scope of Study of Environmental Impact Statement to Submit for Comment and Consideration Proposed Alternates For Bypasses Around Pierre, South Dakota and Brookings, South Dakota." I am requesting a 30 day extension until May 10, 1999, for submission of such bypass alternatives by this office and the affected community.

This extension request should not be interpreted to demonstrate opposition to the DM&E application or otherwise delay any other aspect of the EIS review. It is my intention that such alternatives be submitted within sufficient time to be included as part of the draft EIS to be prepared by the Section of Environmental Analysis.

I would note for the record that the scope of review for the EIS is extensive. The staff of the Section of Environmental Analysis (SEA) and its consultant, Burns and McDonnell, should be commended for an excellent job of outlining a thorough scope of work for the EIS.

However, I would like to file some short comments dealing with the scope of the EIS for consideration by the SEA and the consultant:

1. Safety for the citizens of this state is one of my most important responsibilities. I am recommending the EIS consider each and every rail/highway grade crossing on a case by case basis. There can be no minimum average daily traffic count to examine or comment on safety issues.

Recognizing the rural nature of this state and in the interest of offering some guidance for review, every crossing with at least 500 ADT should be specifically addressed. A threshold of 500 ADT covers just over 50 crossings statewide, representing just over one crossing for every 10 miles.

In addition, several other factors should be considered to determine crossings for specific examination. Those factors include: the speed of the trains; likely speed of the vehicles traveling the roads; crossings which have a demonstrated accident history, and, any crossings where natural or man-made impediments to sight distances for observing trains are noted.



STATE OF SOUTH DAKOTA
WILLIAM J. JANKLOW, GOVERNOR

April 8, 1999

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

ATTN: Elaine K. Kaiser, Chief, Section of Environmental Analysis, Environmental Filing

Dear Secretary Williams and Chief Kaiser:

This office recently received a copy of the Surface Transportation Board's (STB) Notice of Authority of Final Scope of Study for the Environmental Impact Statement (EIS); Request for Comments on: 1) the Modified Proposed Action, referred to as Alternative C, and 2) the City or Rochester, Minnesota's South Bypass Proposal, served on March 10, 1999.

Over the past year or so, much has been written and stated about the Dakota, Minnesota and Eastern (DM&E) Railroad's proposal to expand and reconstruct its railroad for the purpose of transporting Powder River Basin coal to the Mississippi River. It goes without saying that this could be one of the most significant economic development projects in the history of the State of South Dakota. Consequently, I would like to add my name to the list of people who have endorsed this application to the STB.

Having said that, I must also reiterate my public comments regarding the project. There are some areas of concern that I have consistently advocated. First, this project must be developed with the safety and protection of South Dakota's citizens in mind. Second, this project must treat landowners in southwestern South Dakota fairly with regard to property acquisition for the railroad line. Finally, this project must give every consideration to reasonable bypass alternatives for the communities of Brookings and Pierre.

As part of the final scope document for the EIS, additional alternatives surfaced for the new construction in southwestern South Dakota and for a southern bypass for the City of Rochester, Minnesota. This action appears to blend the final scope for the EIS with new alternatives to the transportation aspects of 49 U.S.C. 10901, which the Surface Transportation Board (STB) previously indicated, by its decision of December 9, 1998, had been satisfied.

EXECUTIVE OFFICE
STATE CAPITOL
500 EAST CAPITOL
PIERRE, SOUTH DAKOTA
57501-5070
605-773-3212

Mr. Vernon A. Williams
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As part of the EIS, a South Dakota Department of Transportation approved traffic control plan for highway/rail grade crossings from the Minnesota line to the Wyoming line for the proposed line must be in place and included in the EIS.

Finally, while the state has established criteria for signage and safety at rail/highway grade crossings, each community along the line is negotiating with the DM&E to establish a "community plan" for various impacts of the project. Local community agreements with the DM&E, not in conflict with the state criteria or which are more stringent than the state criteria, should be incorporated in the "approved traffic control plan."

2. It is important the EIS adequately evaluate noise factors. This is of particular importance in Brookings, where the train runs through a residential area, and Pierre, where the train runs through a commercial district and beside a number of motels. Noise as it relates to the diesel locomotive engines and train whistles at crossings are the most obvious noises, but the EIS should also evaluate the difference between the current jointed rail and the continuous welded rail that will be installed as part of this proposal. The difference in the noise volume between the two types of rail should be noted and evaluated.
3. I reiterate my comment to the STB of August 28, 1998, on the transportation aspects of the proposal and request the EIS consider the impact to the DM&E's existing operation as part of the transportation systems review. The State of South Dakota expects the DM&E to continue to play a significant role in the transportation of agricultural products from this state to market. The DM&E has assured shippers that agricultural products would continue to be handled on the line.

However, some projections for the number of coal trains which may eventually crisscross South Dakota suggest that scheduling additional grain trains during harvest season may be a problem. It is necessary to examine the capacity of the rail line and determine whether there will be an impact on current shippers and the shipment of agricultural or other products.

Through the EIS process, the DM&E should provide assurances for inclusion as stipulations from the STB that the DM&E and any successor railroad will exceed the current level of service for grain and agricultural product shipping as well as other products, such as, but not limited to, cement, bentonite, wood chips, clay, rock, and other products.

4. With regard to the aesthetics section of the EIS, the aesthetics of noise attenuation barriers, which may be necessary for some areas of the railroad, should be examined. As part of the mitigation measures to minimize or eliminate potential adverse project impacts to aesthetics, standards should be recommended and adopted for the barriers.
5. Finally, an area of omission from the EIS is the impact of this proposal on property values. This issue should be evaluated and perhaps incorporated as part of the Environmental Justice section. One of the more pressing issues during this entire application process has been the potential impact on property values, particularly in Brookings, where the railroad runs through a residential section of the community.



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APR 15 1999
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Brookings' residents have been and continue to be some of the more vocal opponents of this project. They cite reduced property values for their homes as a major issue, yet nowhere in the scope of the EIS is there a reference to changing property values.

In addition, a good portion of the commercial property abutting the railroad track in Pierre is motel property, which thrives on its ability to attract travelers and conventioners. The value of these properties may be diminished by this project resulting in reduced property values and property taxes paid.

It is speculated that the increased property value and property taxes the railroad will eventually pay will far outweigh the loss of property value to homeowners and business people. However, that does little to appease property owners, whose life savings and future are frequently tied to their homes or businesses. Evaluation of the impact to property values should occur throughout the line, and especially in Brookings and Pierre.

Thank you for the opportunity to participate in this very important process. If you have any questions of this office or the comments submitted pursuant to this letter, please feel free to contact me at your convenience.

Sincerely,



William J. Janklow

WJJ:mdp

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33407



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

STATE OF SOUTH DAKOTA'S MOTION
FOR EXTENSION OF COMMENT PERIOD ON
FINAL SCOPE OF STUDY OF ENVIRONMENTAL IMPACT STATEMENT
TO SUBMIT FOR COMMENT AND CONSIDERATION
PROPOSED ALTERNATIVES FOR BYPASSES AROUND
PIERRE, SOUTH DAKOTA AND BROOKINGS, SOUTH DAKOTA

STATE OF SOUTH DAKOTA
William J. Janklow, Governor
Executive Office
500 East Capitol Avenue
Pierre, South Dakota 57501-5070

Dated: April 8, 1999

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

STATE OF SOUTH DAKOTA'S MOTION
FOR EXTENSION OF COMMENT PERIOD ON
FINAL SCOPE OF STUDY OF ENVIRONMENTAL IMPACT STATEMENT
TO SUBMIT FOR COMMENT AND CONSIDERATION
PROPOSED ALTERNATIVES FOR BYPASSES AROUND
PIERRE, SOUTH DAKOTA AND BROOKINGS, SOUTH DAKOTA

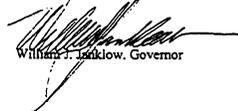
The Office of the Governor of the State of South Dakota, a party of record in the above-entitled proceeding, hereby respectfully requests the Board pursuant to 49 C.F.R. § 1104.7(b) to grant a limited thirty-day (30) extension of time from April 10, 1999, to May 10, 1999, for comments on the Final Scope of Study for the Environmental Impact Statement issued by the Section of Environmental Analysis (SEA) in accordance with 49 C.F.R. § 1105.10(a)(2) under date of March 10, 1999.

The reason for requesting this extension is to allow time for the submission of proposed alternatives by the first-class South Dakota cities of Brookings and Pierre to the applicant's proposed route that would provide for bypasses around those cities. The State of South Dakota believes in good faith that the bypass alternatives to be proposed are reasonably related to the purpose of the proposal to be considered by the Board and other cooperating federal agencies. Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190 (D.C. Cir. 1991).

The extension of time requested is not meant for the purpose of delaying these proceedings nor the development of the EIS, but is necessary for the Board to fully

consider the significant effects on land use, socio-economic, air quality, noise, safety, and transportation system impact categories of the EIS and the feasibility of mitigating those impacts via the bypass alternatives while still achieving the purpose of the overall construction proposal by the DM&E. If the requested extension of time is granted, the alternative proposals for bypasses around Brookings and Pierre will be submitted, on behalf of or by those respective communities, to the Board and served on the parties of record by May 10, 1999.

Respectfully submitted,


William J. Janklow, Governor



SENATOR ARNOLD M. "ARNE" BROWN
STATE OF SOUTH DAKOTA

I hereby certify that on the 8th day of April, 1999, I served copies of the foregoing document upon counsel for the Dakota, Minnesota & Eastern Railroad Corporation and upon all Parties of Record, by first-class mail, postage pre-paid, in accordance with the rules of the Surface Transportation Board.

Harold Joseph

*Shirley A. Jensen
my commission expires
May 1, 2004*

DISTRICT 7, BROOKINGS

- COMMITTEES
- CHAIRMAN, HEALTH & HUMAN SERVICES
- AGRICULTURE & NATURAL RESOURCES
- RETIREMENT LAWS
- EXECUTIVE BOARD
- LEGISLATIVE RESEARCH COUNCIL

DURING SESSION
ADDRESS & PHONE
STATE CAPITOL
500 EAST CAPITOL
PIERRE, SD 57501

SENATE CHAMBERS:
905-773-3821
SENATE CHAIRS OFFICE:
905-773-4034
CELL PHONE:
905-685-3382

BROOKINGS OFFICE PHONE:
905-692-1439
FAX: 605-692-3834

RESIDENCE & PHONE:
1718 TETON PASS
BROOKINGS, SD 57006
905-692-6901

E-MAIL ADDRESS:
cbrown@tsdml.com

April 10, 1999

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

Attention: Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing



RE: DM&E

Dear Ms. Kaiser:

I am supportive of the Dakota, Minnesota and Eastern Railroad Corporation (DM&E) construction project through South Dakota as long as the corporation will bypass around the cities of Brookings and Pierre, S.D.

Brookings is a very progressive community with a lot of potential for residential and commercial growth. We need the services of the railroad just like we need the services of interstate highways. The heavily traveled highways were planned to bypass the city, as should the new DM&E railroad construction project.

The highways and railroads also need the people of our community and other communities to be successful. I will do everything I can as a state legislator to support a first class railroad infrastructure for the state, as long as the project includes a bypass for Brookings and Pierre.

If the DM&E will sincerely and immediately consider the bypass, I am confident that the state legislature and the city and county community leaders will be supportive in respect to any laws, policies and support services they could provide to expedite the completion of this project.



SENATOR ARNOLD M. "ARNE" BROWN
STATE OF SOUTH DAKOTA

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DISTRICT 7, BROOKINGS

- COMMITTEES
- CHAIRMAN, HEALTH & HUMAN SERVICES
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SENATE CHAIRS OFFICE:
905-773-4034
CELL PHONE:
905-685-3382

BROOKINGS OFFICE PHONE:
905-692-1439
FAX: 605-692-3834

RESIDENCE & PHONE:
1718 TETON PASS
BROOKINGS, SD 57006
905-692-6901

E-MAIL ADDRESS:
cbrown@tsdml.com

Having a public health/environmental health background, I am very concerned for the health and safety of the citizens of my community and state. There are numerous environmental issues that have been brought to the attention of DM&E Corporation and forwarded to your office so I will not repeat them.

Your support for a bypass will be greatly appreciated.

Thank you for the opportunity to voice my concerns.

Sincerely,

Arnold M. Brown
Senator Arnold M. Brown



STATE OF WYOMING
OFFICE OF THE GOVERNOR

July 9, 1998



STATE CAPITOL
CHEYENNE, WY 82002

JIM GERINGER
GOVERNOR

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

ENTERED
Office of the Secretary
JUL 13 1998
Part of
Public Record

Attn: Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing

Re: Finance Docket 33407, Dakota, Minnesota & Eastern Railroad Corporation
Notice of Availability of Draft Scope of Study for the Environmental Impact
Statement and Request for Comments

Dear Ms. Kaiser:

On behalf of the State of Wyoming, please be advised that we have reviewed the referenced project. Our comments will address only the new construction proposed into the Powder River Basin in Wyoming. I believe that the Draft Scope of the Study for the EIS is fairly comprehensive and I hope that our contributions in the form of this letter will assist you as you prepare the Environmental Impact Statement for this project. We look forward to continuing to participate in the NEPA process.

Regarding Land Use, the State of Wyoming would ask you to consider the loss and separation of lands, livestock and wildlife losses, fencing issues, the isolation of water sources, the reduction of water right acreage and the additional construction of overpasses, underpasses, pipelines and water tanks as issues pertinent to the area. In addition, loss of forage from range fires and weed infestations that are a direct result of new railroad operations are concerns.

Regarding Biological Resources, there are numerous wildlife species that could be directly or indirectly affected by the proposed project. Our concerns center around habitats, vegetation and biological diversity. Loss of habitat and desirable vegetation could reduce the biological diversity of the area. In addition, fragmentation of habitat types may affect wildlife use and movement patterns. Loss of native vegetative communities and soil disturbance may lead to increased undesirable encroachment or invasion of noxious weeds and undesirable plant species, and disturbance to existing vegetation cover may lead to increased soil erosion and stream sedimentation. Wildlife migration patterns may also be affected by rail placement and fencing patterns. These items should all be

E-MAIL: governor@misc.state.wy.us
WEB PAGE: www.state.wy.us

TELEPHONE: (307) 777-7434
TDD: (307) 777-7660 FAX: (307) 632-3949

included in the study.

If the proposed project is implemented, mitigation measures for wildlife, habitat and lost hunting opportunities must be identified. Not only should direct and indirect losses caused by the construction phase of the project be mitigated, but also those losses caused by the continued disturbance and future operation of the project.

Regarding Water Resources, DM&E should consider the list of Wyoming's impaired water bodies during construction to insure that DM&E makes no additional adverse impact to these water bodies.

Regarding Geology and Soils, it is important that the description of the soils and geology of the area include discussion on the several oil and gas fields and several oil and gas pipelines in the area. Additionally, in Wyoming, both the preferred and alternate routes traverse Eocene through Lower Cretaceous rocks with fossil potential (mammalian and possibly dinosaur).

Regarding Energy Resources, as the proposed project may impact utility and pipeline systems in the area of construction, DM&E and its contractors may find it useful to contact utility and pipeline operators in that area to determine the impact, if any, of the proposed project on their systems.

Regarding Socioeconomics, we ask that the study consider all impacts to industries in the area of the proposed project. These would include, but are not necessarily limited to, agriculture, mining, and community businesses.

Regarding Safety and Transportation, we would ask that the development of the EIS include consultation and coordination with agencies having jurisdictions in such matters to assure the public safety.

Regarding Cultural and Historic Resources, we urge early consultation with Native Americans on this project as this is a unique area with many interests. Specific comments on the project's effect on cultural resource sites will be provided to the STB when the cultural resource documentation required under has been reviewed.

As always, do not hesitate to contact my office should you require further information on any subject discussed in this letter or any other matter that may arise. Thank you for the opportunity to comment.

Best regards,

Jim Geringer
Jim Geringer
Governor

JG:jh



TERRY E. BRANSTAD
GOVERNOR

OFFICE OF THE GOVERNOR
STATE CAPITOL
DES MOINES, IOWA 50319
515 281-5211

ENVIRONMENTAL
DOCUMENT

November 2, 1998

RECEIVED
SURFACE TRANSPORTATION
BOARD
Nov 9 4 16 PM '98
OFFICE OF
CHAIRMAN MORGAN

The Honorable Linda Morgan, Chairman
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Dear Chairman Morgan:

I am writing to lend my strong support for the Dakota, Minnesota & Eastern Railroad's application before the STB (Finance Docket No. 33407). This project is important to Iowa's agriculture and energy industry, and should have very positive benefits on the national rail transportation system.

I understand you are currently scheduled to make a preliminary decision on the project on November 17, and will complete an Environmental Impact Statement thereafter. I hope you will send a strong message for Iowa's agriculture and energy sectors with a favorable decision on November 17, followed by a review of the EIS on a definitive schedule which will allow this project to go forward in a timely manner.

Thank you for your consideration of these issues as you review this important matter.

Sincerely,

Terry E. Branstad
Terry E. Branstad
Governor

TEB/rcb



OFFICE OF THE GOVERNOR
STATE OF MISSOURI
JEFFERSON CITY
65101

MEL CARNAHAN
GOVERNOR

November 25, 1998

STATE CAPITOL
ROOM 216
(673) 781-2822

RECEIVED
SURFACE TRANSPORTATION
BOARD
Nov 30 3 43 PM '98
CHAIRMAN MORGAN

Ms. Linda Morgan
Chairman, Surface Transportation Board
1925 K Street NW
Washington, D. C. 20423-0001

Dear Chairman Morgan:

I would like to add my support for the Dakota, Minnesota & Eastern Railroad's (DM&E) application to build a new railroad (Finance Docket No. 33407). This project will provide important service to Missouri's electricity producing utilities and electricity consumers.

Missouri utilities and other shippers throughout the country have suffered in recent years due to lack of capacity and system-wide rail service failures. We need the kind of service improvements made possible by this project. Please do whatever you can to keep it moving through the regulatory process. I believe this application provides the Surface Transportation Board with a good opportunity to demonstrate its effectiveness in fostering a positive rail transportation network in this country.

I look forward to your strong, positive endorsement of this application.

Very truly yours,
Mel Carnahan
Mel Carnahan

MC/dk

STATE OF NEBRASKA



MIKE JOHANS
GOVERNOR

DEPARTMENT OF ENVIRONMENTAL QUALITY
Suite 400, The Arkum
1200 W Street
P.O. Box 98922
Lincoln, Nebraska 68509-8922
Phone (402) 471-2186



April 8, 1999

Ms. Elaine K. Kaiser
Environmental Project Director
Section of Environmental Analysis
Surface Transportation Board
Washington, DC 20423

RE: STB Finance Docket No. 33407 - Dakota, Minnesota & Eastern Corporation Construction Into the Powder River Basin

Dear Ms. Kaiser:

Your letter of March 10, 1999, and the accompanying information have been reviewed. Attached is a memo written by John Bender regarding his findings on issues in the Environmental Impact Statement. Please review Mr. Bender's memo and contact John at (402) 471-4700 if you have questions.

If you require additional information, feel free to contact me at your convenience.

Sincerely,

John

Joe Francis
Associate Director
Customer and Technical Assistance Division

cc: Pat Rice
John Bender

JF/do

John Bender's comments

STB Finance Docket No. 33407

Dakota, Minnesota & Eastern Railroad Corporation Construction Into the Powder River Basin

Notice of Availability of Final Scope of Study for the Environmental Impact Statement (EIS); Request for Comments on 1) the Modified Proposed Action, referred to as Alternative C, and 2) the City of Rochester, Minnesota's South Bypass Proposal.

There is no impact to Nebraska's jurisdiction in Alternative C or the Rochester Bypass. However, Alternative D (existing transportation corridors alternative) involves Nebraska. Some rebuilding and new construction would occur in northwest Nebraska. Several streams in this area are designated State Resource Waters. They are as follows:

WH1-11710 Cunningham Creek - Sec 10-31N-50W (within Nebr. Nat. Forest, Pine Ridge Division) (SRW-A)

WH1-20120 Squaw Creek - Headwaters to Nebraska National Forest boundary (Sec 20-31N-51W) (SRW-A)

WH1-20300 Soldier Creek - Middle Fork Soldier Creek to White River (SRW-A)

WH1-20310 Middle Fork Soldier Creek (SRW-A)

WH1-20400 Soldier Creek - Headwaters to Middle Fork Soldier Creek (SRW-A)

WH1-30000 White River - Kyle Creek (Sec 35-31N-54W) to Soldier Creek (SRW-B)

WH1-40000 White River - Headwaters to Kyle Creek (Sec 35-31N-54W) (SRW-B)

(SRW-A = State Resource Water Class A; SRW-B = State Resource Water Class B)

The significance of these designations is contained in Title 117 - Nebraska Surface Water Quality Standards, Chapter 3 (Antidegradation Clause) which states:

State Resource Waters Class A - These are surface waters, whether or not they are designated in these Standards, which constitute an outstanding State or National resource, such as waters within national or state parks, national forests or wildlife refuges, and waters of exceptional recreational or ecological significance. Waters which provide a unique habitat for federally designated endangered or threatened species and rivers designated under the Wild and Scenic Rivers Act are also included. The existing quality of these surface waters shall be maintained and protected.

State Resource Waters Class B - These are surface waters, whether or not they are designated in these Standards, which possess an existing quality which exceeds levels

necessary to maintain recreational and/or aquatic life uses. The existing water quality of these surface waters shall be maintained and protected. However, the State may choose, in accordance with Neb. Rev. Stat. § 81-1513, to allow lower water quality as a result of important and necessary economic or social development in the area. There shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control. In cases where potential water quality impairment associated with a thermal discharge is involved, the method of implementation of this antidegradation policy shall be consistent with Section 316 of the Clean Water Act.

SRW - A waters are held to a non-degradation standard. No human activity can be allowed which causes any degradation of existing quality. SRW - B waters are held to the same standard except that a lowering of water quality may be allowed if important and necessary economic or social development of the area is to result. Extensive public hearings and comment, as well as local economic assessments are required for such lowering of existing quality to be considered. In no case will water quality lower than needed to maintain existing uses of SRW-B waters be allowed.

100 - B43



The Rochester Public Schools

Independent School District 636
615 SW 7th Street • Rochester, Minnesota 55902 • Phone (507) 285-8592 • Fax (507) 287-1344
Business Services

May 14, 1998

To: The Honorable Charles Canfield
Members Of The Rochester City Council
Members Of The Olmsted County Board of Commissioners
Members Of The Rochester School Board
Dr. Jack Noennig
Mr. Steven Kvenvold
Mr. Richard Devlin
Mr. Charlie Reiter
Mr. Phil Wheeler

From: Paul Bourgeois, CPA
Director of Business Services

Concept Paper - Proposal For Surface Transportation Board To Mandate A Bypass Around Rochester And Nearby Cities As Condition Of Approval Of DM&E Expansion Project

Background

As has been well publicized in the past week or so, the proposed expansion of DM&E rail traffic through Rochester to carry Powder River Basin coal to Midwestern markets will significantly impact the city of Rochester and other cities in Olmsted County. DM&E has indicated that upon startup, up to 16 additional trains may be running through Rochester, with as many as 40 in ensuing years.

The manner in which Rochester has developed has resulted in the DM&E tracks dividing the city in half. Numerous crossings have thousands of vehicles crossing daily, including hundreds of school bus trips. The additional train traffic will negatively impact the flow of vehicular traffic, result in unsafe conditions for children to walk to Holmes School from areas north of the tracks, cause potential delays in the response time of emergency vehicles. In addition, the trains will be running through residential neighborhoods on the east side of town at all hours of the day, and since that area is an up grade out of the Zumbro Valley for loaded trains, with the locomotives running at full throttle to pull the trains up hill. There are also many other factors that are not listed here, but should be added to any official petition to the Surface Transportation Board.

With mile long coal trains running through the city at high speed, derailments could also pose very serious problems. Trains that derail at high speed tend to "accordion" with a resulting largeness of cars that can take days to clear. If a mile long coal train were to derail at high speed in downtown Rochester (as happened in Alma, WI last year), it is possible that virtually all of the crossings could be blocked by derailed cars for up to several days.

While the benefits to the overall country of this project are clear - more competition for lower electrical rates and cleaner air for the environment - it is important that the project be completed in a manner that would not harm the City of Rochester and Olmsted County.

When the DM&E filing was announced on February 20, I began doing research on the proposal to try to assess the impact it may have on the community in regards to the busing of our students. After researching the proposal, it became obvious that it would have a detrimental impact on the safety of our students being transported or walking to school. With that knowledge, and knowing that the Federal Government has traditionally approved this type of railroad proposal, I began doing some research into the possibility of a bypass around Rochester and any possible reasonable locations for a bypass.

Because of the aforementioned detrimental effects to Rochester, a bypass of the City would be an optimal solution. It would allow the DM&E to still make a very lucrative profit hauling coal. It would allow the City of Rochester and Olmsted County to not be negatively impacted by the expansion project. It may even present future opportunities for the DM&E to gain future business and the City of Rochester to attract diverse industries that would need rail services for their operations.

Please note that I am by no means an expert in the construction of railroads, but it is my hope that the following proposal be used as input for a study of a potential bypass by professionals in the field of transportation and city planning.

Bypass Proposal

It is proposed that a bypass be constructed around Rochester as follows:

The bypass would diverge from the DM&E mainline just west of Dodge Center. It would curve to the southeast, avoiding Dodge Center, and then proceed due south down an abandoned railroad grade (the former Chicago Great Western mainline to St. Paul) to a point just north of Hayfield.

At that point, the line would swing southeast, avoiding Hayfield, and proceed first in a southeasterly direction and then an easterly direction along the ridge line that divides the Zumbro River and Root River watersheds.

The line would then swing slightly northeast and pass just south of the Rochester Airport over Highway 63. At that point, the line would continue proceeding in an east by northeasterly direction along an abandoned railroad grade (the former Chicago Great Western branch line from

Stewartville to Dover and St. Charles) to a point just east of Dover, where it would reconnect to the DM&E mainline.

Total mileage of the bypass would be approximately 45 miles. The bypass would not only bypass Rochester, but every major city in Olmsted County except Dover, and it would also bypass Dodge Center and Kasson in Dodge County.

It is hoped that there is a high probability that this construction would be feasible. The majority of the line would be constructed on routes that were once in existence. The approximately 8 mile segment from Dodge Center to Hayfield would be on the roadbed of the former Chicago Great Western mainline to St. Paul, and the approximately 18 mile segment from the Rochester Airport to Dover would be on or near the roadbed of the former Chicago Great Western branch line to Dover and St. Charles. Most of the line would be built where there were railroads already, which means that rail line construction over that terrain was once feasible and theoretically should be again. Additionally, building along the ridge line that separates the Zumbro and Root Rivers should allow for fairly level construction of roadbed to connect those two former rail line segments.

The total mileage of the bypass route would only be in the range of 10-15 miles longer than going straight through on the existing tracks.

The existing line could be retained as a low speed, light density line to serve the existing customers on the routes.

Benefits To Rochester And Olmsted County

1. All major cities in Olmsted County, except Dover, would be bypassed. The attendant traffic and safety problems in the cities would not materialize, because the trains would not be going through the cities and towns. In addition, Dodge Center and Kasson would be bypassed.
2. The major cities might actually experience LESS train traffic than currently operated. If the DM&E operated all mainline trains, including general freight trains, around the bypass, then even the current long trains through towns would be rerouted. The only traffic would be the peddler way freights serving the existing customers. The cars picked up from customers could be left at one of the bypass connections for pickup by one of the mainline freights, allowing them to bypass Rochester and the other towns also.
3. Public safety would be improved by even rail traffic on the existing lines.
4. Future development of industry could occur along the rail line near the Rochester Airport. Rochester could possibly compete for future growth in areas that require rail service, such as an ethanol plant, a grain elevator operation to serve Southeast Minnesota, or even an intermodal terminal for transferring trucks onto train cars. These would be located well away from residential development occurring in Rochester and separated by several miles

With a bypass of Rochester, they may have to borrow \$1.3 Billion, in which case they may need 5-6 trains daily to break even.

DM&E's projections indicate at least 8 loaded trains daily at startup, which would indicate that they would have the financial capacity to build a bypass around Rochester and still earn a very significant profit on the operations.

A secondary way to pay for the project would be for the DM&E, the City of Rochester, and Olmsted County to partner in paying for it.

With the DM&E's current plans to come straight through Rochester, they are budgeting to upgrade the existing track between Dodge Center and Dover at approximately \$1 Million per mile for approximately 37 miles. The City of Rochester and Olmsted County may be looking at the construction of overpasses at extensive but as yet unknown costs. In this scenario, if the DM&E applied the funds that they were going to use to upgrade the existing trackage, and the City of Rochester and Olmsted County applied the funds they were going to use to build overpasses, perhaps enough funds would be available to complete the bypass. Also, if Rochester & Olmsted County had to contribute significant dollars, that perhaps could also be used as barter to induce the DM&E to provide 150 additional jobs and property tax revenue to the community by locating their proposed locomotive and car repair shops on the bypass near the airport. That would be an immediate return on Rochester's investment.

Of the two options laid out here, obviously having the Surface Transportation Board mandate that the DM&E build the bypass as a condition of approval of the project is preferred, because it would be at the DM&E's expense. With the large dollars involved, it serves to highlight how important it is that the Surface Transportation Board mandate the construction of a bypass.

Conclusion

As stated in the title, this is a concept paper. Experts in the fields of transportation need to determine if the concept laid out here is even feasible. Hopefully it is at least useful to prompt further study. At worst, if it indeed turns out that a bypass simply is not feasible, Rochester and Olmsted County will not be facing any worse situation than is currently being faced as regard the DM&E expansion. At best, it may prove possible, and if in fact a bypass is constructed, in addition to eliminating the negative aspects of the DM&E upgrade, it may even result in long term benefits to the DM&E, the City of Rochester, and Olmsted County. I am at your service for any assistance as you respond to the challenges presented by the DM&E upgrade.

and I-90 from Stewartville. This development could serve to further diversify Rochester's economy.

5. Rochester could potentially compete for the diesel repair shops and car repair shops of the railroad that are planned to be built as part of this project. They could be constructed south of the airport, well away from any residential development. Potentially 150 jobs plus additional tax revenue could be gleaned from winning such a proposal.

Benefits To DM&E

1. DM&E would be able to access additional business. There is still a large grain elevator in Hayfield that could be accessed. Any future development of industry south of the airport could potentially generate additional traffic.
2. Operationally, DM&E could operate all trains at full speed over the bypass. They would not have to slow down through any of the towns, because they would not be going through any of the towns. In addition, they would not have to pull loaded trains upgrade after crossing the Zumbro River, because they would be avoiding the Zumbro Valley completely.
3. DM&E would also be avoiding all the potential accidents that are bound to occur if the operate directly through the towns.

Costs Of The Bypass

According to figures released by the DM&E to Trains Magazine, their 278 miles of new construction in the project would cost an estimated \$532 Million, or \$1.9 Million per mile. The refurbishing of existing track would cost about \$1 Million per mile.

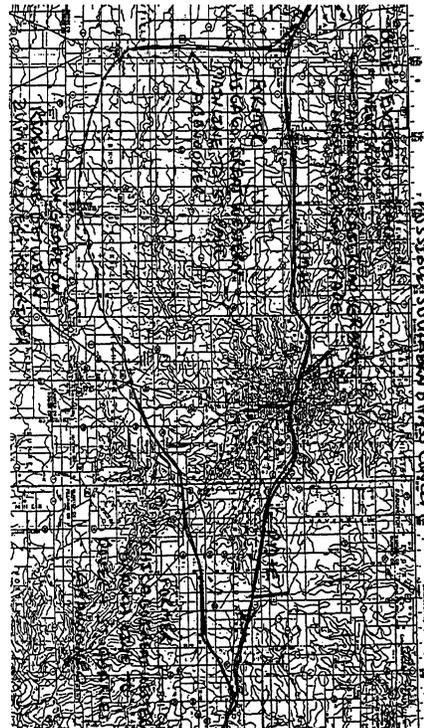
Extrapolating those figures, the cost of a 45 mile bypass would be approximately \$85-\$90 Million.

Paving For The Bypass

There are several ways that the bypass could be paid for.

The preferred way would be to have the DM&E pay for it as part of the project. The Surface Transportation Board has the power to approve the project with conditions. It is imperative that one of those conditions be a bypass around Rochester. If the Surface Transportation Board mandates it, the railroad must comply. It is imperative that Rochester and Olmsted County make a very strong case as to the needs and benefits for a bypass.

As an aside, the total cost of the DM&E upgrade project without a bypass of Rochester has been estimated at \$1.2 Billion. At that level of borrowing, the DM&E has stated that it would take 23 million tons annually, which would equate to 4-5 trains daily, to break even.





COUNTY OF
Olmsted

RAYMOND F. SCHMITZ
COUNTY ATTORNEY
151 4TH STREET SE
ROCHESTER MN 55904-3710
507/285-8138 FAX 507/281-6054
WITNESS LINE / CHILD SUPPORT
287-2060 285-6381

CRIMINAL DIVISION
JAMES S. MARTINSON
SANDRA ABRAHAM
HELEN B. BROGHANAN
GEOFFREY A. KIERULDT
RICHARD W. JACKSON, JR.
DAVID S. VOIGT

CIVIL DIVISION
ROBERT W. LICHTENSH
SANDRA ABRAHAM
CHRISTINE M. ANDERSON
DORIS D. GENEVAU, JR.
THOMAS P. KELLY
J.E. MERSHOURG
JULIE S. VOIGT

In the matter before the Surface Transportation Board
STB Finance Docket No. 33407
Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin

RE: Comments on the Transportation Aspects of the Application

Party of Record Submitting Comments:

Olmsted County, Minnesota
Representative: Raymond F. Schmitz, County Attorney
Olmsted County
151 4th St SE
Rochester, MN. 55904-3710 US

DATE: June 10, 1998

Olmsted County, Minnesota, as a Party of Record to the matter before the Surface Transportation Board (STB) identified as STB Finance Docket No. 33407, requests that the STB consider the following comments in its deliberations on the public convenience and necessity of the proposal by the Dakota, Minnesota & Eastern Railroad (DM&E) to construct a new rail line into the Powder River Basin in northeastern Wyoming and to rebuild approximately 597.8 miles of existing railroad from Wasta, South Dakota to Winona, Minnesota.

I

The proposal as structured does not adequately respond to the effect on the public convenience that the proposed construction and rebuild will have on highway travel, including freight shipments, business travel and personal travel in the environs of Olmsted County and the City of Rochester, Minnesota. The DM&E in its application before the Board describes the how the public convenience will be served in its response to the requirements of 49 FR 1150.4(a), which is contained in Volume 1 of 2, Supporting Information and Exhibits of the application. In its description of the proposal under this section, the applicant states that



1
AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

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"Major traffic crossings are expected to be protected with state-of-the-art grade crossing protection and lights - prioritized and coordinated in conjunction with the FRA and the relevant State Department of Transportation". Further evidence of the plan to use at-grade crossings for all highway crossings is found in the information provided in support of 49 CFR 1150.6(c), also contained in Volume 1 of 2 et al., which illustrates the Capital Spending Estimates for New Construction and for the Rebuild portions of the proposal. In this section it can be seen that whereas allowances are made for grade separation structures within the New Construction segment of the project, no similar allowance is provided for any grade separation structures over the Rebuild portion of the project. At the level of traffic anticipated to be achieved in Year 6 of operations, which would involve 37-39 trains a day passing through Olmsted County, there will be a minimum of 2 hours of delay introduced at each highway crossing, assuming that the operating speed achieved by the railroad is 34 MPH (the figure used by the DM&E in its application for determining shipping time advantage over competing railroads), a minimum gate closure time of 20 seconds, a minimum gate clearance time of 10 seconds after a train has passed, and the delay time associated with dispersal of traffic queues associated with crossing closures. This level of delay represents a three to four-fold increase in delay over the level of delay that is experienced by the Olmsted County community with the existing level of train traffic on the rail corridor.

The rail corridor currently bisects a total of 12 public and 3 private streets at-grade in the City of Rochester and 24 additional highway crossings at-grade throughout Olmsted County. These crossings carry an estimated daily volume of traffic of 112,000 vehicles across the railroad corridor at the current time, including over 30,000 commuters, shoppers and visitors who travel to Rochester, the major regional center of Southeastern Minnesota and a major regional and international health center. Of particular importance are two highway corridors designated as Principal Arterial Highways according to the highway classification system utilized by the US Department of Transportation, US Highway 63 and Olmsted County CSAH 22. US Highway 63 carries an average ADT of over 25,000 with a 5-axle truck volume of 1,000 vehicles a day, making it, along with Interstate Highway 35 near Owatonna, Minnesota, the second heaviest traveled crossing of the DM&E corridor in Minnesota after US Highway 52 in the Rochester area. The traffic interruption of these two corridors along with three additional arterial corridors which each carry over

10,000 vehicles per day (11th Ave NW, 11th Ave NE, West Silver Lake Drive) in the City of Rochester will impact current levels of mobility in Olmsted County and with the level of mitigation proposed in the application will impact the public convenience related to business and visitor traffic in and through the City of Rochester.

II

The proposal as currently structured does not adequately respond to certain elements of national rail transportation policy as outlined in 49 CFR 10101, which addresses Interstate Transportation and in particular national Rail Transportation Policy. Subsection (8) of 49 CFR 10101 states that in regulating the railroad industry, it is the policy of the United States Government "to operate transportation facilities and equipment without detriment to the public health and safety". In determining whether this proposal is consistent with the public convenience and necessity, consideration should be given to whether the proposal is consistent with national Rail Transportation Policy as identified in 49 CFR 10101, in particular the referenced subsection 49 CFR 10110 (8). Additional safeguards need to be considered to insure that the public health and safety are protected. Before a full analysis of the proposal is completed the financial implications of how adequate safeguards of the public health and safety will be provided should be completed in order to provide for a realistic assessment of the financial feasibility of the project.

Among the public health and safety factors which are not adequately addressed in the proposal include:

- Noise - the proposal has the potential to interfere with Rochester's primary business, which is the health care industry. Potential populations that may be impacted by the railroad generated noise include patients at hospitals associated with the Mayo Medical Center (located within 3 blocks of the rail line) as well as elderly assisted care facilities in two locations located within 2 blocks of the rail corridor.
- Pedestrian Safety - the proposal as currently structured will impact the safety of pedestrians and bicyclists of all ages as the level of exposure to higher rail traffic will increase the risk at crossings for individuals. Access to public facilities, including schools and parks, needs to be maintained and may necessitate more substantial structures, such as pedestrian over or underpasses, to insure adequate safety.

3

- Vehicle Safety - the increase in the level of rail traffic has potential health and safety implications as the level of exposure by residents of the community to potential rail related accidents will rise in absolute terms. Because of the significant costs potentially associated with providing for an appropriate level of safety to minimize auto-train incidents, it is premature to consider the financial viability of the proposal without understanding the full scope of safety costs associated with the project.
- Air Quality - The proposal has the potential to adversely affect public health through the introduction of higher levels of carbon monoxide and particulate matter. Rochester, because of the medical services industry associated with the Mayo Clinic, will attract and house a higher than average population of individuals who may be impacted by the presence of heightened levels of particulates or pollutants resulting from the train operations or vehicular emissions associated with idling traffic delayed at rail crossings.

III

In making a determination on the merits of the proposal before the STB, consideration should be given to whether the proposed application demonstrates consistency with that aspect of national rail transportation policy outlined in 49 CFR 10101 (13), which states that in regulating the railroad industry, it is the policy of the United States Government "to ensure the availability of accurate cost information in regulatory proceedings, while minimizing the burden on the rail carriers of developing and maintaining the capability of providing such information".

The proposal does not adequately address the external and indirect costs associated with the increase in rail traffic that will occur if the this application is approved. The time and cost consequences of congestion, the change in property values expected for residential properties in close proximity to the rail corridor, accident costs, potential costs associated with mitigating traffic-related noise and air pollution, and costs associated with unavoidable expenditures for emergency service facilities have not been factored into the proposal. To properly evaluate the feasibility of the project from a financial perspective the costs associated with properly addressing and assigning the responsibility for external and indirect costs should be evaluated prior to action on the merits of this proposal.

4

IV

The application is unclear as to aspect of whether adequate revenue will be generated to support the debt service of the proposal. In Part I of the applicants response to the 1150.4(c), documented in Application for Construction and Operating Authority, Volume 1 of 2, Supporting Information and Exhibits, the statement is made that the amount of recoverable coal in the Powder River Basin is 4.9 billion tons of coal. This section also states that by Year 6 of operations the Dakota, Minnesota and Eastern Railroad expects to be transporting 100 million tons of coal annually, and furthermore states that this tonnage will represent 20% of the annual tonnage of coal shipped out of the Powder River Basin by the three rail carriers that would be servicing the Powder River Basin coal fields. If the 100 million tons that will be transported by DM&E represents 20% of the annual tonnage shipped, then it stands that 500 million tons will be shipped annually out of the Powder River Basin. With 4.9 Billion tons of recoverable coal, and 500 million tons being shipped annually, the effective life of the basin as a producer of coal is 9.8 years.

The application further states in its response to 1150.6(a), documented in Application for Construction and Operating Authority, Volume 1 of 2, Supporting Information and Exhibits, that the proposed debt structure for the project will be fully amortized over 13 years. If the effective life of the Powder River Basin coal as described in the material is 9.8 years (given the assumptions regarding recoverable reserves and shipping levels), what is the source of and type of traffic that will be generated in the future to cover the remaining years of debt service over the life of the financing package?

V

The application references but does not assume or estimate the level of traffic that will be interchanged with the Burlington Northern or Union Pacific Railroad Companies, who also provide service from the Powder River Basin to markets within the DM&E Market area. In the Application for Construction and Operating Authority, Volume 1 of 2, Supporting Information and Exhibits, in the discussion related to 49 CFR, 1150.4, paragraph B(1) discusses the advantage in shipping and cycle times DM&E will offer to shippers of coal in the DM&E's Core Market Area. In further discussion in the second paragraph of B(1), the application states "Although it is not projected that BNSF and UP will interchange substantial volumes of traffic with DM&E in its earliest years of operation, it should be in the economic interest of those

carriers to cooperate with DM&E where the result would be a more efficient movement." In the verified statement of Lewellyn Davis that accompanied the application, Part V indicates that the DM&E corridor "will have ample excess capacity". If there is indeed ample capacity and a positive cost advantage to the BNSF and UP to utilize the DM&E corridor, than the reasonable level of coal traffic that is used for estimating and evaluation purposes should reflect this. The proposal is not clear as to whether the estimated level of traffic in Year 6 and beyond represent those shipments that will be originating through contracts only with the DM&E or whether it represents the combined influence of traffic originating with the DM&E as well as additional traffic from BNSF and/or UP that may be routed over the corridor due to its competitive time advantage. If in fact there is a economic benefit to BNSF and/or UP to utilize the DM&E track for shipping of coal to markets, the assumptions used in the application should be adjusted to reflect upward the level of traffic in order to represent the reasonable level of traffic that may be expected for evaluation of the proposal.

ATTEST
[Signature]
Raymond F. Schmitz
Olmsted County Attorney

CERTIFICATE OF SERVICE

I certify that I have this day served copies of document upon all parties of record in this proceeding, by expedited first class mail service

[Signature] 6/16/98
Signature Date



188610 545

June 11, 1998

Ms. Victoria Rutson
Section of Environmental Analysis
Surface Transportation Board
1925 K Street
Washington, D.C. 20423

Dear Ms. Rutson:

Please accept these comments concerning the environmental issues dealing with the Dakota, Minnesota and Eastern Railroad Corporation's proposed Powder River Basin Expansion Project. The railroad is proposing an alternate route around the city of Mankato, Minnesota. This alternate route would traverse Nicollet county and would affect wetlands, farm fields, rural homes, drainage systems, and would cross many township roads, county roads, and state highways. This alternative route would create a new corridor. The railroad presently uses a corridor through the city of Mankato and this should remain as the route used after the completion of the expansion project.

The environmental impacts of the Nicollet County route are great. The present route through the city of Mankato already has crossings etc. and is being impacted already by train traffic. Any further environmental impacts on this route would be more easily mitigated than those created with a new corridor creation. The Mankato route should be the route selected.

In closing, I am opposed to routing the DMand E through Nicollet County.

Very truly yours,

[Signature]
Judy D. Hanson
Nicollet County Commissioner

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Office of the Secretary

JUN 17 1998

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Fax Number: 507-931-9220



188611 546

1700 Sunrise Dr., P. O. Box 518, St. Peter, MN 56082

June 12, 1998

Ms. Victoria Rutson
Section of Environmental Analysis
Surface Transportation Board
1925 K Street
Washington, D.C. 20423

Dear Ms. Rutson:

RE: DM&E Railroad; Your Finance Docket No. 33407
Nicollet County, MN; Alternate 2 Alignment

For the proposed Union Pacific Bypass at Mankato, Minnesota, the DM&E has a map indicating that the Blue Earth County south route is their Preferred Route. The through-Mankato route is the DM&E's Alternate 1 alignment.

With the Nicollet County Alternate 2 route involving two major river crossings, river bluffs, major highways, organized drainage systems, etc.; there is much to investigate and take into consideration. And yet, with this not being a favored route by the DM&E, it is difficult to determine just how much effort and expense should be put into addressing all the apparent concerns.

Is possible for the STB to reopen the comment period for Nicollet County (Alt. #2), if the STB decides that it is not acceptable to DM&E's "Preferred" and "Alternate 1" routes? Please advise as to whether or not there will be a specific Alternate 2 comment period, should the STB recommend its consideration. A written response (hand written fax will do) is preferred for distribution to the County Board of Commissioners.

Sincerely,

[Signature]
Mike Wagner
Public Works Director

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Office of the Secretary

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Fax Number 507-931-6978



PUBLIC WORKS DEPARTMENT
Highway Department
Park Department
Drainage System Inspection
Agricultural Inspection

1700 Sunrise Dr., P. O. Box 518, St. Peter, MN 56082

Michael C. Wagner, P.E.
Public Works Director/Highway Engineer

June 24, 1998

Mr. Stephen G. Thornhill
DM&E Project Manager
Burns & McDonnell
9400 Ward Parkway
Kansas City, Missouri 64114-3319

Dear Mr. Thornhill:

RE: DM&E's Nicollet County (Last Choice) Mankato Area Alternative
Powder River Basin Expansion Project

By a memo of June 8, 1998, you requested human and natural resources information. Just prior to that you were good enough to provide us with the first map available, which showed a Nicollet County alternate route for the Mankato area. These two documents were our first exposure to the route and we immediately distributed copies of the map to the Township Boards and, through them, the affected landowners. At the same time our County Coordinator, unsuccessfully tried to arrange for a County Board of Commissioners meeting with Mr. Kevin Schieffert. Not until he received a copy of a County Board Resolution opposing the project, due to a lack of information, did Mr. Schieffert respond and set a meeting for June 23, 1998.

Over 100 landowners and local governmental representatives attended the yesterday's meeting. Mr. Schieffert answered questions for approximately one and a half hours with one predominant point being made; the Nicollet County alignment has not been given any engineering consideration. The line on your map was simply drawn by the DM&E from a topographic map with no actual field observations or human and natural resource considerations of any kind. Mr. Schieffert was very clear that the Nicollet County route was not the primary choice at this time and should it become so, it would be open to whatever changes in alignment the DM&E determined to be best for its purpose.

So, what do we do? Your letter requested a response by June 26, 1998. It is obvious that the Nicollet County route, wherever it may be placed, has very significant human and natural resources to deal with. It involves two major river crossings, two sensitive river bluff cuts with approximately 200 feet of elevation change, numerous home and farm sites, at least two legally organized surface and underground drainage systems, many highway crossings, and productive farm land with complex private underground drainage systems. Your issues on the bottom of page 2 should all be checked out by site visits, surveys and follow-up activities, as you suggests.

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Fax Number 507-931-6978



1548

MANKATO TOWNSHIP
RT 6 BOX 209
MANKATO, MN 56001

July 1, 1998



Ms. Victoria Rutson
Sec. Of Environmental Analysis
Surface Transportation Board
1925 K Street
Washington, DC 20423

FD33407

Re: Proposed Powder River Basin Expansion Project - Wyoming, South Dakota and Minnesota.

Dear Ms. Rutson:

Mankato Township would like to go on record opposing the proposed route for DM & E rail line through Mankato Township, Blue Earth County, Minnesota. The Mankato Township Board of Supervisors moved to oppose this proposed route on 5-19-98.

An informational meeting was subsequently held at the Mankato Township Hall on 6-24-98 with an overflow crowd that were against the route through Mankato Township (the proposed South Route).

DM & E has not met with Mankato Township to get our opinion of the route. They have been told to talk to the township by the City of Mankato and the Minnesota State DOT. Mankato Township has its own Planning and Zoning which does not allow railroads in the zoned areas that this proposed route will go through - Conservation and Agricultural zones. The proposed route will also disrupt many residential homes along the route and cause potential traffic hazards.

The Township requests that the railroad use existing lines and routes already established.

Sincerely,

Dan Fogal
Clerk
Mankato Township

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Office of the Secretary

JUL 13 1998

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B49



PUBLIC WORKS DEPARTMENT
2122 CAMPUS DR SE
ROCHESTER MN 55904-4744
507/285-8231

7-2-98

Ms. Elaine Kaiser
Environmental Section
Surface Transportation Board
1925 K Street NW
Washington, DC 20434-0001

Subject: Finance Docket #33407

Dear Ms. Kaiser,

Please accept this submittal with reference to the subject docket.

BACKGROUND - THE FACILITY

The Olmsted Waste-to-Energy Facility (OWEF) is a solid waste fired district heating and cooling plant which cogenerates electrical power. The OWEF was built in 1985/1986 at a capital cost of approximately \$27,000,000. Commissioned in 1987, the plant is owned and operated by Olmsted County. Several extensions and improvements have been made to the district energy system over the last ten years at a cost slightly exceeding \$3,000,000. Roughly one-half of the total debt for the plant and district energy system remains outstanding.

Some two dozen buildings are currently served with building heat, while a lesser number also receive cooling and/or electricity. The plant is the cornerstone of Olmsted County's integrated solid waste management program, processing approximately 60,000 tons of municipal solid waste each year. In combination with the County's recycling, yard waste composting, and industrial and hazardous waste management programs, the OWEF provides a sound, long term solid waste management option which minimizes environmental risk and liability, while maximizing resource conservation and recovery.

BACKGROUND - THE AUTHOR

My name is Rob Dunnette. I am the Plant Manager of the OWEF and have served in that role since new construction in 1985, having responsibility for all aspects of facility operation. I have twenty two years experience in power generation acquired in facilities using

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Administration Building Maintenance Surveying and Mapping Engineering Highway Maintenance Parks & Agriculture Solid Waste

conventional, nuclear and solid waste fuels. For the past ten years I have specialized in environmental issues relating to air quality, water quality and waste management. I am a principal in the management of energy and environmental issues involving the OWEF, the adjacent Olmsted County Human Services Campus, and other Olmsted County facilities. I work closely with the Minnesota Pollution Control Agency on numerous multi-media environmental issues. I have authored the County's submittals for several regulatory dockets, provided testimony in support of environmental rulemaking processes, and act as the primary technical support person for the Minnesota Resource Recovery Association.

THE ISSUE - AIR QUALITY

The history of air quality in the City of Rochester is slightly checkered. During the past decade, the City of Rochester has been designated by the Minnesota Pollution Control Agency (MPCA) as a non-attainment area for carbon monoxide, particulate matter, and sulfur dioxide; meaning that State and/or federal ambient air quality standards for those pollutants have been violated on at least one occasion. The non-attainment status with regard to particulate matter and carbon monoxide has, to my knowledge, been resolved. The sulfur dioxide non-attainment status, however, is outstanding.

When a geographical area is designated as non-attainment for one or more pollutants, existing stationary sources of the pollutant in question must demonstrate reductions in emissions such that the ambient air concentrations of those pollutants fall below published limits. In addition, a ban is placed on the construction of new, significant stationary sources of the pollutant in question.

Normally, mobile sources of air pollution are not taken into account when reviewing the permits and compliance status of stationary sources. The DM&E situation, however, is a little different in that the proposed change is regional in nature and therefore invokes Clean Air Act prohibitions on regional transportation plans that cause ambient air quality standard violations or delays the attainment of those same standards.

The OWEF, like all large stationary sources in Rochester, operates under rigorous limits which are based, in part, on the ambient concentrations of various pollutants; sulfur dioxide, carbon monoxide, and particulate matter in particular. Any additional pollutant emissions caused by the proposed increase in rail traffic, whether directly or indirectly (from idling automobiles at rail crossings for example) will result in reduced allowances for existing plant operations, and possibly in ambient air quality violations.

CONCLUSION

I strongly recommend that the potential air quality effects of an increase in rail traffic be investigated before making any policy decisions regarding the DM&E proposal.

Thank you for your attention to this matter. If you have any questions regarding this submittal, I can be reached at (507) 287-2270.

Sincerely,

Rob Dunnette
Plant Manager
Olmsted Waste-to-Energy Facility

B50



COMMUNITY SERVICES
151 4TH STREET SE
ROCHESTER MN 55904-3711

SOCIAL SERVICES
837/285-7009
FAX 507/287-2434

PUBLIC ASSISTANCE
ADMINISTRATION
ACCOUNTING
CHILD SUPPORT
507/285-8382
FAX 507/287-2381

July 2, 1998

Elaine Kaiser
Chief, Section of Environmental Analysis
STB Finance Docket #33407
Surface Transportation Board
1925 K ST NW
Washington, DC 20423-0001

Re: DME proposal

Dear Ms. Kaiser:

Olmsted County Community Services is an organization of approximately 400 employees. We are responsible for implementing Federal and State programs for public assistance, social services and community corrections. We serve nearly 16000 county residents during any given year.

Olmsted County Community Services serves a significant number of persons with disabilities who live in their own homes. These individuals may be disabled due to physical impairments, developmental disabilities or serious and persistent mental illness. Over 500 hundred of these individuals receive in-home supports as an alternative to nursing home placement. In addition to these individuals, we are aware of more than 1500 others with a disability who receive comprehensive residential services or who live in their own homes without case management from our agency.

The major concern we have for these individuals is emergency access to medical care. Since their homes are in all parts of Rochester, there is no good way to estimate the additional risk of the emergency vehicle having to wait for or try to find alternative routes to and from the person's home.

In addition, these populations often have frequent medical appointments, while not emergency, are urgent. Individuals may have little stamina and long waits for trains could pose problems as they go to and from appointments. One particular example might be a dialysis patient.

Page 2
DME letter

Delays for trains could also impact schedules for the providers, adding train waiting time in addition to travel time will reduce time available for client contact. This has become a significant issue since shortage of staff has prevented agencies from scheduling staff geographically. Examples of such services are home health care, meals on wheels, medication administration.

Of course, the problems that are faced by the non-disabled population are also of concern for persons with disabilities. Noise and air pollution will have negative impact for those persons living nearest the rail line.

We would urge that an environmental impact study be done to investigate the extent to which the changes in rail service will negatively impact on the lives on persons with disabilities.

Sincerely,

Patricia L. Carlson, M.S.
Director

Rochester

MINNESOTA

Rochester Convention and Visitors Bureau

July 2, 1998

Elaine Kaiser, Chief Section of Environmental Analysis
STB Finance Docket #33407
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001H

Dear Ms. Kaiser:

As the Executive Director of the Rochester Convention & Visitors Bureau, I am writing out of great concern for the negative impact that the D.M. & E. Railroad proposal will have on Rochester's hospitality industry. The hospitality industry represents the second largest employer in Olmsted County with over 8,000 employees. The Rochester Convention & Visitors Bureau is the entity that advertises and promotes Rochester area as a tourist destination and convention center, and these efforts fuel the hospitality industry. Our budget of \$560,000 is used for marketing Rochester, resulting in an estimated 1.5 million visitors to our city annually.

The visitors staying in our community are medical patients, leisure and corporate travelers and convention attendees. It is important that our guests can move easily throughout our city and enjoy the small city atmosphere that attracts them here. Rochester offers visitors a large variety of shopping, dining, entertainment and lodging all within the city which sprawls in a five mile radius of its downtown core. This is a huge asset for our community and when marketing the city we boast of short commute times without the traffic and congestion of a much larger city. Visitors and citizens alike must cross railroad tracks in order to go north or south of downtown. Commute times and traffic congestion are directly impacted by the railroad. An increase in rail traffic would turn what has been an asset into a liability as delays and traffic obstruction would result.

Rochester has 55 hotels and 5,000 hotel rooms city-wide. This number is equivalent to that of Minneapolis, MN. Of these hotels, 40 hotel properties and over 3,700 hotel rooms are within nine blocks of railroad tracks. The guests occupying these rooms will be directly impacted by the noise created by the substantial increase in train traffic. Transportation is again affected as these guests travel about our city by car and on foot to get to their hotels. Rochester's Mayo Civic Center, southeastern Minnesota's largest convention and entertainment facility, hosts large groups of people who travel through the city to reach the facility. The train tracks go right along Civic Center Drive, only one block from this facility. With literally thousands of people attending functions at the facility at any given time, there are issues of not only traffic disturbance but safety issues raised by increased train traffic in such a high usage area.

Rochester is not the typical city of 80,000 people. Our marketability as a tourist and convention destination is negatively impacted by the issues raised above. Anything that has a negative effect on our visitors has a negative impact on our hospitality industry. Tourism and conventions have over a \$22,000,000 economic impact on our community annually. As the economic hub for southern Minnesota, this impact is felt regionally and any negative impact caused by the railroad would be far reaching.

Sincerely,

Brenda L. Riggott
Brenda L. Riggott
Executive Director



150 South Broadway, Suite A • Rochester, MN 55904-6500
(507) 288-4331 • 1-800-634-8277 • FAX: (507) 288-9144
E-Mail: info@rochestercvb.org • Website: www.rochestercvb.org



B51



12 WEST GARDEN STREET
P.O. BOX 313
EYOTA, MINNESOTA
55725-0313
TEL: 507-545-2235
FAX: 507-545-2215

B52

July 2, 1998

Ms. Victoria Rutson
Section of Environmental Analysis
Surface Transportation Board
1925 K Street
Washington, D. C. 20423

Dear Ms. Rutson;

Re: Proposed Powder River Basin Expansion Project
Wyoming, South Dakota, and Minnesota

The City of Eyota has 4 park areas in the city. Two of these parks are located within 225 feet from the railroad tracks.

One park abuts the American Legion Post #551, which is also within 225 feet of the tracks. It has an area for horseshoe tournaments. The remainder of the park is grass at this time, but the legion has requested permission to install playground equipment.

The second park contains a softball field, playground equipment, and a pavilion for picnics. It is very popular for ball tournaments and family reunions during the summer months. The park provides an additional practice field for the school in the spring. It also provides access for snowmobiles along its eastern edge, during the winter months. These two parks will feel the impact of increased rail traffic.

The other two parks are located approximately 1/4 mile from the tracks. These parks will not be directly affected by the increased rail traffic.

If there is any other information that we can provide, please contact me at (507) 545-2135 between the hours of 8 and 4:30, Monday through Friday. I can also be contacted by fax at (507) 545-2235 or E-Mail at Eyota@Junco.com.

Sincerely,

Alfred O. Schumann
Alfred O. Schumann
Mayor

PLANNING WITH YOU IN MIND!

B53



182658

WINONA COUNTY
Highway Department
5300 HIGHWAY 61 WEST
WINONA, MINNESOTA 55987-1398
Phone (507)454-3673 Fax (507)454-3699

David L. Rholl, County Engineer
Robert A. Kosidowski, Asst. Engineer Don Hazelton, Maint. Superintendent

Office of the Secretary

July 9, 1998

JUL 13 1998

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

Attention: Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing

Dear S.E.A. Chief Kaiser

Winona County is concerned about the proposed work that will take place within the boundaries of the County. We feel that the construction of passing tracks, a new marshalling yard and the reconstruction of the C.P. Rail line connection should have been identified as new construction and not simply as a rebuild. Furthermore, it is difficult for the County to properly assess potential impacts due to the lack of detail on the location and extent of passing tracks, the new marshalling yard and the reconstructed C.P. Rail connection. If this level of detail is not provided, we must rely on the D.M. & E. in becoming a willing and cooperative corporate citizen in mitigating the revealed impacts within the communities along the rail line. While this may be the case, conditions placed by the S.T.B. to assure that cooperation and communication from the D.M. & E. will occur would provide a level of comfort to the communities.

Several grade crossings exist along the D.M. & E.'s existing rail line. Due to the increased train volumes and speeds, existing signals may become non-conforming with current standards. Many unsignaled crossings may be required to become signalled. Crossing sight distances which are currently not an issue under existing train speeds may become unsafe under higher train speeds. Signals and crossing surfaces must be updated or added and sight distances improved to meet current standards and sound engineering principles. Costs must be borne by the D.M. & E. This E.I.S. should document that this will be the case.

The City of Winona and its neighboring cities of Goodview and Minnesota City are in a unique geographical situation. They lay on a thin shelf bounded by the Mississippi River to the North and high and steep bluffs to the South. The cities are bisected by the C.P. Rail line which is the eastern connection to the D.M. & E. Rail line. All north-south streets within the cities of Goodview and Winona are crossed by the C.P. Rail line. The C.P. Rail marshalling yard is located within the City of Winona. The urban location of the C.P. marshalling yard results in severe vehicular congestion and delays under the slow moving switching operations. There are no rail road grade separations within the cities of Goodview and Winona. The C.P. Rail has announced that significant increases of rail traffic will occur on this line. This increase will be in addition to the traffic increase predicted by the D.M. & E. Powder River Basin project.

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This line (C.P. Rail) continues along the Mississippi River's edge until it crosses the river near the south county line. Again several crossings exist. Many crossings are currently inadequate. As train volumes increase, more crossings will become inadequate. A grade crossing safety study is currently being conducted on this line. Given current funding levels of Federal crossing safety funds, it will take over 20 years to upgrade the crossings under current train and vehicular volume standard requirements. The non-participating costs of the signals will severely tax the resources of the local units of government. The county requests that this connecting line be included in the study and that all impact categories be addressed under the total estimated increase in rail traffic from both carriers.

We also request that the E.I.S. discuss the potential of combining the C.P. Rail marshalling yard with the new D.M. & E. marshalling yard near Minnesota City. The removal of the C.P. Rail marshalling yard from the urban area would provide mitigation of vehicular congestion.

On page 10 of the draft scope of study under 5. Transportation Systems, sentence A. refers to the existing transportation network. Sentence (2) refers to new grade crossings. We hope that this is a typo and that it be changed to read existing crossings. This same sentence refers to identifying vehicular delays for crossings having daily vehicular traffic volumes of 5000 or more. Traffic volumes of this magnitude are common in large metropolitan areas but rare in our state Minnesota. It would likely be a distance of 50 or 60 miles between crossings of this magnitude. Crossing delay issues should not be based on an arbitrarily assigned volume applicable only in major metropolitan areas. A road having a traffic volume of 5000 in downtown Minneapolis may be playing a very minor role in the overall transportation network of the area. However, a road having a traffic volume of 1000 may play a major role in the transportation network of a rural area. Roads are assigned a functional classification description under the direction of the Federal Highway Administration. Actual traffic volumes are simply relative to the area served. We request that vehicular delays be addressed for all roads having classifications of major collector and arterial as defined by the F.H.W.A. Roads that serve emergency service facilities should also be addressed.

Yours truly,

David L. Rholl
David L. Rholl
Winona County Highway Engineer

cc: Winona County Board of Commissioners
Winona County Regional Rail Authority

Certification of Service

Copies of the comments from Winona County have been served this 10th day of July, 1998, by first class mail on all persons designated by the Board as parties of record in Finance Docket No. 33407.

David L. Rholl
David L. Rholl
Winona County Highway Engineer

Dated July 9th, 1998.

City Of St. Charles
830 Whitewater Avenue
St. Charles, MN 55972

Phone (507) 932-3020
FAX (507) 932-5301

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July 9, 1998

Office of the Secretary
Case Control Unit
STB Finance Docket 33407
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

Attn: Elaine Kaiser, Chief
Section of Environmental Analysis
Environmental Filing

Dear Ms. Kaiser:

I am writing on behalf of the City Council and citizens of the City of St. Charles, Minnesota to express our deepest concerns regarding Dakota, Minnesota & Eastern's proposed plan to rebuild their rail lines through St. Charles.

Although the City Council was initially supportive of the project, subject to DM&E constructing numerous improvements to enhance our citizen's safety, as more information has become available we have become increasingly concerned about the impact this project will have on our community.

Apart from the obvious concerns we have on how to protect our community from the substantial increase in the amount of trains that are proposed to pass through St. Charles, we are growing increasingly concerned about the potentially devastating effect that noise, coal dust pollution, and other environmental impacts will have on our community. We have heard recent reports that this project will have a significantly detrimental impact on residential homes and businesses within a 1,000 feet of the rail line solely due to the increase in noise and coal dust that will result from the proposed increase in rail traffic.

I implore you to take the time and resources necessary to develop an environmental impact study that will carefully consider the impact that this proposal will have on all people and communities - both large and small - that are affected by this proposal. I would also urge you to broaden the scope of the environmental



impact study so that the study is as comprehensive for those communities with existing DM&E rail lines as it will be for those communities that are proposed to have new rail lines installed. The potential impact could be equally devastating for both communities and therefore the study should be equally comprehensive.

One of the primary duties of government is to protect its citizens. This protection applies both to external threats in times of war and to internal threats when the quality of life of its citizens is threatened by private business interests. I again implore you to carefully consider the proposal offered by DM&E Railroad to ensure that their private interests do not subjugate the health and welfare of the our public.

I thank you for your consideration of our concerns.

Sincerely,

Dana H. Young
Dana H. Young
City Administrator

Mayor Mel Brownell, Clerk/Admin., Dana H. Young, Council: Arly Hammann, Jim Ryan, Sharon Vreeman, Bob Wistow



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JUL 10 1998

MAIL
MANAGEMENT
STB

RAYMOND F. SCHWITZ
COUNTY ATTORNEY
151 4TH STREET SE
ROCHESTER MN 55904-3710
507/285-8138 FAX 507/281-6054
WITNESS LINE / CHILD SUPPORT
287-2050 285-8381
JENNIFER DAVISON
JAMES S. MARRINSON
ROBERT W. MCINTOSH
DAVID S. VOGT
MICHAEL W. JACKSON, JR.
SCOTTNEY A. HANDEL
J.E. MESENBURG
CIVIL DIVISION
ROBERT W. MCINTOSH
JENNY ABERNETHY
SUSAN J. MORGAN
THOMAS F. KELLY
JULIE S. VOIT

9 July 1998

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

Attention: Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing

RE: Comments on the Scope of the Environmental Impact Statement
Dakota, Minnesota and Eastern Railroad Corporation Application to extend rail service into
the Powder River Basin

Dear Ms. Kaiser:

Olmsted County, Minnesota and its appointed Dakota, Minnesota & Eastern Railroad Task Force has prepared the following comments on the scope of the Environmental Impact Statement for the application by the Dakota, Minnesota and Eastern Railroad Corporation, STB Finance Docket No. 33407, prepared by the Section of Environmental Analysis of the Surface Transportation Board and dated May 10, 1998. Olmsted County and the communities it represents feel that, consistent with the intent of the National Environmental Policy Act of 1969 (NEPA), as amended, that a full assessment of the environmental impacts of the proposed action and consideration of alternatives to the proposed action should be completed. The EIS needs to address those factors, consistent with Section 101 of 42 USC 4331, that will "assure for all Americans safe, healthful, productive and aesthetically and culturally pleasing surroundings" and will "attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable or unintended consequences". In order to accomplish this goal and to comply with the spirit of NEPA, Olmsted County feels that the scope of the Environmental Impact Statement (EIS) should be broadened to incorporate the following matters into the review of the project.

Summary of Key Issues for Olmsted County

Olmsted County has identified a number of matters related to the scope of the EIS, which are discussed throughout the remainder of this memorandum. However, from the perspective of Olmsted County, several key matters which need particular attention during preparation of the EIS include:

- 1) Differentiated scope of EIS - A full Environmental Impact Statement addressing all the factors listed in 49 CFR 61105 should be prepared for the entire project. The EIS should not be limited to only evaluating the effects of the increased traffic over the rebuild portion of the project but should address construction related impacts as well.

- 2) Impact to Mayo Medical Center in Downtown Rochester - The EIS needs to closely evaluate the potential impact of the proposal to the Mayo Medical Center in Rochester and its associated hospitals and assisted living facilities. Physicians at Mayo in 1996 saw over 240,000 patients, and Mayo employs over 18,000 individuals in downtown Rochester. The ongoing population of patients at Rochester Methodist Hospital*, with 794 beds, as well as the large number of elderly individuals living downtown (including 440 individuals in assisted living facilities and 285 elderly apartment units) within 650' of the rail corridor are particularly susceptible to the noise and pollution of the railroad operation and potential hazards associated with derailments including those involving hazardous materials. These populations create very significant logistical problems for the community in terms of any evacuation that may be needed in case of derailment.
- 3) Residential Neighborhood Impact - The EIS needs to address the impacts to an estimated 1000 households in Olmsted County that are likely to be located within the primary impact area associated with the railroad due to noise, pedestrian safety and other factors.
- 4) Traffic Delay and impact to Emergency Services-There are 12 highway-rail crossings in the City of Rochester and 36 total highway-rail crossings throughout Olmsted County, of which only two are grade separated. Four at-grade crossings have existing traffic levels above 10,000 ADT and it is expected that by the Year 2015 two additional at-grade crossings will have volumes above 10,000 ADT. Of these six crossings, one is projected to have an ADT approaching 30,000 while three others are projected to have an ADT near 20,000. The EIS needs to address the impacts of traffic delay and congestion to the community in general and to providers of emergency services in particular.
- 5) Federal Medical Center* - The EIS should address issues related to evacuation logistics and contingency plans for dealing with derailments involving hazardous materials in the vicinity of the Federal Medical Center, a prison associated with the US Department of Justice Bureau of Federal Prisons. This facility directly abuts the DM&E rail corridor, which is within 40 yards of the closest occupied building on the prison grounds and 200 yards of the closest inmate-housing unit. Additionally, the operation of the railroad is anticipated to have a potential impact on the institution's perimeter security system which is motion/vibration activated, and this impact needs to be evaluated to determine if alternate security approaches need to be considered.

The remainder of this memorandum will speak in greater detail to these five key issues as well as other issues related to the scope of the EIS that have been identified by our community.

Comments on the General Scope of the Environmental Impact Statement

COMMENT ON DIFFERENTIATED SCOPE OF EIS:

A distinction should not be made for the purposes of environmental review between the new construction portion of the project and the rebuild portion. The draft scope states that over the rebuild portion of the project only those impacts created by the increase in operations will be evaluated in the EIS. Olmsted County contends that the rebuild activity is an integral part of the proposed project, without which the feasibility of the new construction and the resulting operations plan calling for the estimated shipping of 100 million tons of coal annually is called into question. The proposed operations plan and financial feasibility of the project rests not only on extending the new construction into the Powder River Basin, but also on upgrading the existing corridor through the installation of an adequate rail and ballast system to support

* See attached Map of Downtown Rochester for locations of noted land uses



increased weight and travel speed, along with the construction of numerous sidings to allow the two way flow of train traffic on a "single line" track. Evidence of the importance of the rebuild to the overall success of the project can be seen by comparing the estimated cost of the new construction (\$532 million) to the estimated cost of the rebuild (\$875.75 million). Without the rebuild, the competitive advantage DM&E would realize in shipping times will not be achieved. The existing infrastructure has resulted in a situation where the DM&E has one of the poorest accident records of any operating railroad. Without a major improvement to the existing infrastructure, DM&E may not be able to achieve the reliability needed to assure the success of their business plan. For these reasons, we believe a full review of all the environmental impact factors should be conducted for the entire project including the rebuild activity.

ASSUMED LEVEL OF TRAFFIC

The application references but does not assume or estimate the level of traffic that will be interchanged with the Burlington Northern or Union Pacific Railroad Companies, who also provide service from the Powder River Basin to coal users within DM&E's core market area. In the DM&E's application to the STB, in a discussion related to 49 CFR, 1150.4, B(1) (found in the *Application for Construction and Operating Authority, Volume 1 of 2, Supporting Information and Exhibits*), the advantage in shipping and cycle times DM&E expects to offer to shippers of coal is described. In further discussion in the second paragraph of B (1), the application states "Although it is not projected that BNSF and UP will interchange substantial volumes of traffic with DM&E in its earliest years of operation, it should be in the economic interest of those carriers to cooperate with DM&E where the result would be a more efficient movement". In Part V of the verified statement of Lewellyn Davis that accompanied the application, Mr. Davis indicates that the DM&E corridor "will have ample excess capacity". If there is indeed ample capacity and a positive cost advantage to the BNSF and UP to utilize the DM&E corridor, then the reasonable level of coal traffic that is used for estimating and evaluation purposes should reflect this. The proposal is not clear as to whether the estimated level of traffic in Year 6 and beyond represent those shipments that will be originating through contracts only with the DM&E or whether it represents the combined influence of traffic originating with the DM&E as well as additional traffic from BNSF and/or UP that may be routed over the corridor due to its competitive time advantage. If in fact there is a economic benefit to BNSF and/or UP to utilize the DM&E track for shipping of coal to markets, assumptions regarding the daily number of trains should be adjusted upward to reflect the reasonable level of traffic that may be expected.

FACTORS NOT STUDIED:

If it is determined by the Section of Environmental Analysis that all of the environmental factors listed in 49 CFR 81105, will not be evaluated during the preparation of the EIS, an explanation should be provided as to why those factors that will not be studied were determined to be inapplicable as per paragraph 1105.7(e). For the rebuild portion of the project, it appears that factors including Land Use (1105.7(e)(3)), Biological Resources (1105.7(e)(8)), Water (1105.7(e)(9)), as well as the factors listed under 1105.7(e)(11) for Rail Constructions, are not proposed in the draft scope to be addressed for the rebuild portion of the project.

ADEQUACY OF NOTICE:

Olmsted County has researched the notice which was given regarding the filing of the application for this project by the DM&E Railroad Corporation. We have not been able to find evidence that this notice was provided in a newspaper of general circulation in Olmsted County, as per 49 CFR

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decades, the preliminary analysis shows no statistically significant impact resulting from rail proximity. The statistically significant predictors of housing value for these types of structures in Rochester include age, structure size, and the presence or absence of garages. It is a coincidence of the settlement history of the City that many older, smaller structures are located along the rail corridor, and as a result, lower income households now live along the corridor.

It appears likely that an increase in rail traffic would devalue these properties. The EIS should examine historical data from comparable situations representing a significant increase in traffic along an existing line-used rail corridor to determine if an impact on property values can be determined. In any case, the EIS should include an analysis of mitigative measures to reduce the impacts on households along the rail corridor, to avoid or relieve the impact on property values, and to avoid a disproportionate impact on households of lower income.

In addition to these dwelling types, there are other concentrations of housing along the corridor both within and outside Rochester that have a significant probability of having lower income residents. There are mobile home developments in Marion Township and in the City of Eyota that are located within close proximity to the rail corridor, as well as nursing homes and subsidized senior high rise housing complexes in Rochester that will be affected by increased rail traffic.

In Rochester, the elementary school attendance area most affected by the increase in traffic in the rail corridor is the Holmes Elementary School*. 62% of Holmes school attendees qualify for the Free and Reduced Lunch program, another indication that the households likely to be impacted by expanded rail traffic are disproportionately lower income households.

B) IMPACT ON MINORITY HOUSEHOLDS

While the average proportion of people of color in the Rochester School District (ISD 535) is 16%, the proportion of people of color attending Holmes Elementary School is 44%. Research of the attendance records of ISD 535 should be undertaken to determine if the part of the Holmes attendance area along the rail corridor includes these minority households. The EIS should include an analysis of mitigative measures to reduce the impacts on households of color along the rail corridor, to avoid or relieve the impact on property values, and to avoid a disproportionate impact on households of color.

The attached letter from the East Side Pioneers Neighborhood Association further discusses the burden that would be placed on low-income and minority households within the Holmes Elementary School neighborhood.

AIR QUALITY (Item #1 - page 8)

1. The City of Rochester has a significant population of individuals drawn to the city by the presence of the Mayo Medical Center*, which draws patients globally and nationally as well as locally to the Mayo Campus in downtown Rochester within 4 to 6 city blocks (1000' to 2000') of the DM&E railroad. In 1996 Mayo served over 240,000 patients, and non-resident patients are a major element of the estimated 300,000 visitors who come to Rochester annually for health services, business and conventions. Because of the presence of Mayo,

* See attached map of Downtown Rochester for location of noted land uses

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81150.10(f). In order to provide for adequate public input regarding the impact of this proposal Olmsted County respectfully requests that a public hearing be conducted in Olmsted County, and that notice of the meeting be widely provided through a number of sources in order to insure the greatest participation of interested individuals may occur. Olmsted County is willing and stands ready to assist the STB in making arrangements for such a public hearing.

CLARIFICATION OF 1105.7(e)(10)

We note that in the description of certain issues to be studied it is specifically identified that mitigative measures will be proposed to minimize or eliminate potential adverse project impacts, but that in other instances it is proposed that the EIS will only describe or discuss the impacts that may be created, without any specific reference to the identification or inclusion of proposed mitigation options. We believe that consistent with 1105.7(e)(10), the actions needed to mitigate adverse environmental impacts for all types of proposed impact need to be identified and discussed in the EIS. While this may be implicit in the regulations governing preparation of the EIS, it appears that certain items selectively have been chosen for which mitigation will be identified and discussed and others for which it may or may not. We believe that most if not all of the impacts to be created by the increased level of operations, as well as by the construction associated with the rebuild portion of the project, are elements for which mitigation options and costs should be identified in the EIS.

Comments on the six elements which the Draft Scope identified for study relative to the Rebuild portion of the project.

ENVIRONMENTAL JUSTICE

- I. The introduction in the draft scoping document related to the existing DM&E system (page 8) states, under the paragraph entitled "Impact Categories", that Environmental Justice is to be one of six categories studied. Subsequent discussion is provided for five categories of impact but not for Environmental Justice. Olmsted County would suggest that the description of work to be completed on Environmental Justice in the section dealing with Proposed New Construction, as defined in Item 14 on page 7, should also be used as a guide for the evaluation of Environmental Justice concerns to be completed for the increased traffic on the existing DM&E system. We have completed a preliminary analysis which suggests that the potential for Environmental Justice concerns may exist in Olmsted County both in regards to low income individuals / households as well as minority individuals / households. In this preliminary review the following information was gathered:

A) IMPACT ON LOWER INCOME HOUSEHOLDS

Preliminary analysis indicates that the increase in rail traffic through the existing corridor will have a disproportionate impact on lower income households. This analysis is based on the Olmsted County Assessor's records for single family and 2 to 3 - unit residences in the city of Rochester. While the average citywide building value for such structures is \$68,900, the average value for structures within 250 feet of the rail corridor is \$39,800. Previous analyses comparing building values with household survey data indicate that housing values are strongly correlated with household income. Thus, it is likely that the population impacted most significantly by the increase in rail traffic will be lower income households.

The data should not be interpreted to indicate that proximity to the railroad adversely impacts property values. Perhaps due to the low level of rail traffic currently and in the past few

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downtown Rochester has also become home to a significant number residents who in part have chosen to live there due to the presence of Mayo. For example, there are three high rise elderly housing* projects not affiliated with Mayo located within 2-3 blocks of the Mayo Medical Center, with 436 units of housing. Additionally, Mayo itself provides a residential alternative, CharterHouse*, housing 380 elderly and disabled individuals on the north side of the campus within 650' of the railroad corridor. Other unique types of residence facilities, such as the Gift of Life Transplant house (for patients awaiting transplant surgery), Hope Lodge (for cancer patients) and a Ronald McDonald House are located in close proximity to the Mayo Medical Center.

The populations in the previous paragraph have been specifically identified for consideration due to the potential risk they face from an increase in airborne pollutants that may occur as a result of the increased level of train traffic. The EIS should evaluate the impact of airborne pollutants on those permanent and transient individuals suffering from pulmonary afflictions. The potential increase in coal dust, diesel exhaust and total particulates of respirable size should be identified, and the effects of expected exposures analyzed to interpret the potential health impacts of these exposures. The technique for completion of this analysis is described in the attached letter from Dr. David Orgel, Midwest Region Medical Director for the IBM Corporation. He suggests that a comparison should be made between matched areas where train traffic approximately equal to that expected with the DM&E expansion is analyzed and compared to an area with no train traffic. Part of the community concern relative to coal dust is described in an article appearing in the October 12, 1993 issue of the Wall Street Journal (page A1) describing coal dust problems in Virginia associated with the operation of the Norfolk Southern Railroad.

2. The Rochester urbanized area is currently designated an attainment area for carbon monoxide and a non-attainment area for sulfur dioxide. The potential for sulfur dioxide emissions associated with the increased level of train operations as well as vehicular delay at crossings needs to be evaluated to insure that the impact to the community is clearly understood and possible mitigation measures identified. The attached letter from Mr. Rob Danette, Plant Manager of the Olmsted County Waste-to-Energy Facility, describes concerns relative to this issue from the perspective of a major stationary source generator located in the City of Rochester which would be impacted by further mitigation requirements relative to SO₂.

In regards to carbon monoxide, Rochester has been designated as being in attainment since 1987. A major contributing factor to achieving this status has been the efforts made to improve traffic flow and reduce vehicle idling, particularly in the downtown area of the city. The introduction of a greater level of delay due to higher levels of train traffic may offset some of the benefits achieved due to improvements in traffic flow. The Rochester area experiences periodic episodes of temperature inversions which were a major contributing factor to problems related to air quality in the past.

NOISE (Item #2 - page 9)

1. The scope of the noise analysis completed for the Rebuild portion of the project should be comparable to that proposed for the new construction. In comparing the proposed scope on page 5 for the new construction and on page 9 for the rebuild portion, we note that the EIS proposes in its analysis related to the new construction to 1) describe potential noise impacts, 2) identify whether there will be a substantive increase in the level of noise, and 3) propose mitigative measures to minimize or eliminate potential project impacts to noise receptors. The

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scope of the EIS relative to the rebuild portion of the project should be clarified to also include identification of proposed mitigative measures to minimize or eliminate impacts where an increase in noise level of 3db Ldn or more is expected or where resulting noise levels will exceed 65 db Ldn.

In Olmsted County a significant number of sensitive receptors exist in what is likely to be the noise impact area of the rail operation. We have estimated the number of residences within 250' of the corridor and 650' of all highway/rail grade crossings and have found that in the communities of Olmsted County the following number of residences exist:

City of Byron: 270 residences (approximately 27% of the housing units in Byron)
City of Rochester: 781 residences (approximately 2.5% of the housing units in Rochester)
City of Eyota: 53 residences (approximately 10% of the housing units in Eyota)
City of Dover: 35 residences (approximately 21% of the housing units in Dover)

In addition, within the City of Rochester, a nursing home complex, Town Hall Estates*, with a capacity for 60 residents, directly abuts the railroad corridor, and a 12-story transitional housing complex, Charter House, with 380 elderly and disabled residents, is located just beyond the 650' boundary, as is Rochester Methodist Hospital*, a 794 bed facility affiliated with the Mayo Medical Center.

Other sensitive receptors directly abutting the railroad corridor includes 320 acres of community parkland in Rochester, 7 acres of parkland in Byron*, the city park in Dover* (see attached letter from City of Dover), and the 40 acre Oakwood Cemetery* in Rochester. In addition, in the City of Eyota two park areas* are located within 225' of the rail corridor (see attached letter from Mayor Alfred Schumann). An example of the potential impacts that may be created on parkland areas which abut the railroad corridor are described in the attached letters from Mr. Greg Musson, Director of Quarry Hill Nature Center*, a 270 acre park facility on the east side of Rochester, and from the East Side Pioneers, a neighborhood association serving the residential area in northeast/southeast Rochester impacted by the rail proposal.

ENERGY RESOURCES (Item #3 - page 9)

1. The assessment of how the proposed operations will impact the utilization of the nation's energy resources should include a description / estimation of the additional fuel usage associated with the delay that will be created for vehicular traffic at highway/railroad crossings due to the change in traffic levels on the rail line, and the costs of this fuel usage to society.
2. The applicant has emphasized that construction of the proposed project will result in improved service to its existing non-coal customers due to the higher travel speeds and thus shorter shipping time that should be realized with the project. Anecdotal evidence suggests that rail companies which have begun shipping large quantities of coal have raised the entry requirements for non-coal traffic onto their systems by not accepting non-unit trains of other commodities. If this happens, there is likely to be a shift of non-coal traffic away from rail and onto truck, which has the potential to negatively affect the overall utilization of the nation's energy resources. This potential impact should be evaluated based on the ability or probability of existing non-coal shippers to generate large enough loadings to create unit train traffic, and where the amount of product is not great enough to generate these types of loadings, to estimate the impact of shifting this traffic to truck.

* See attached maps of Downtown Rochester, Byron, Eyota and Dover for location of noted land uses

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clients or patients who depend on delivered services as well as those utilizing remote monitoring devices to alert care providers to potential health problems.

The attached letter from Ms. Patricia Carlson, Director of Olmsted County Community Services, identifies some of the safety and public health concerns related to this population in the community and how they may be impacted by the increased level of railroad operations. An attached memorandum from Ms. Sherri Jorgensen, Senior Advocate for Senior Citizens Services, Inc., describes the scope of services provided by that agency and the level of activity which takes place on a monthly basis (9850 client visits) at the Senior Citizens Center, located in the Rochester Armory*, listed on the National Register of Historic Places. The Armory is within 500' of the DM&E rail corridor along US Highway 63, the most heavily traveled corridor served by an at-grade crossing along the DM&E rail corridor in Olmsted County (25,000 ADT).

5. The EIS should discuss the applicant's contingency plan for operations in the event of an accident or derailment. This should address the issue of how train flow and train staging will be managed in the case of a mishap that takes an extended period of time to clear so as not to obstruct primary roads and/or create interruptions to emergency response services.
6. An additional safety concern that should be addressed in the EIS is the strong attractive nuisance and trespass environment that the railroad creates which brings with its added concerns of accident and injury to persons within the railroad right of way. The EIS should describe proposed mitigation measures to minimize or eliminate potential accident and injury concerns related to the issue of trespass.
7. Consistent with recently adopted Federal Railroad Administration rules regarding track safety, as reported in the June 29, 1998, Wall Street Journal, page A6, the EIS should discuss the applicant's program for addressing concerns with welded track failure in extreme temperatures and the adequacy of proposed resources for insuring continuing inspection and repair of failing rail sections.

TRANSPORTATION SYSTEMS

1. Consistent with the requirements of 49 CFR 1105.7(c)(2), the EIS should estimate the amount of traffic that may be diverted to other transportation modes or systems as a result of the proposed action and the effects of the proposed action on regional or local transportation systems and patterns. There is anecdotal evidence, referenced earlier in this memorandum, that where coal traffic has become the predominant commodity on a rail line, shippers of other products find it more difficult to have freight shipped by rail in a timely manner.
2. The proposed rebuild will require replacement of ballast, ties and rail throughout the length of the DM&E rail corridor. Officials of the DM&E have indicated that approximately 3-4 miles of seamless rail can be installed in a day, but that the preparation work, as well as work on highway approaches leading to individual highway / rail crossing, may create delays for an extended period of time.

In the section discussing transportation related impacts, the EIS should include an evaluation of the potential impacts resulting from construction activity associated with the project, including an estimate of how long existing at-grade crossings will be impacted, a description

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SAFETY

1. The description of rail/highway grade crossing safety factors in item 4(A) on page 9 should include not only those factors that may affect vehicular and rail traffic but also should include a description of potential conflicts with pedestrian and bicycle traffic crossing the rail line. Pedestrian and bicycle conflicts are a significant issue in all the cities within Olmsted County. In Byron, it is estimated that the location of approximately 285 housing units within walking distance of the Byron High School* will require children to cross the railroad corridor for travel to school. In the City of Eyota, approximately 148 housing units within walking distance of the Dover-Eyota High School* and 61 housing units within walking distance of the Dover-Eyota Elementary School* require children to cross the railroad corridor for travel to school. In the City of Rochester, the attendance area for Holmes Elementary School* is bisected by the railroad corridor, with 454 housing units located across the tracks from the school site. The attendance area for John Marshall High School* also is bisected by the DM&E railroad corridor.

The safety of pedestrian travel to community park facilities will also be impacted, as evidenced in the City of Byron, where approximately 300 housing units are located to the south of railroad tracks within one mile of the community swimming pool*. In the City of Rochester, it is estimated that approximately 300 homes are separated from the nearest neighborhood playground areas* by the existing railroad corridor.

The attached letter from the East Side Pioneers Neighborhood Association provide further detail on the potential safety concerns as they relate school and park issues in the City of Rochester.

2. The location of the railroad corridor splits most the communities in Olmsted County. Due to this, the identification of safety factors for existing grade crossings completed as part of item 4(A) on page 10 should address whether there are any special design concerns at particular intersections which pose particular hazards to the operation of school buses. With the rail corridor essentially splitting the city, frequent crossing of the rail corridor is needed to transport school children to and from school and during the school day. The Rochester School District found that the number of times school buses crossed the rail corridor on a typical day was on the order of 370 crossings (see attached letter from Earlene Wickre, Coordinator of Business Services, Rochester Public Schools).
3. The discussion of rail/highway grade crossing safety factors in item 4(A) on page 9 should an assessment of unique factors that are found to be affecting sight distance at highway / rail crossings in the City of Rochester. The DM&E has created potential visibility problems for motorists by their practice of selling easements to advertising companies for the placement of billboards at the intersection rail corridors and highways at selected locations throughout the city. The safety / sight distance problems have been noted in particular for larger vehicles such as school buses. The safety implications of this practice should be addressed in the EIS.
4. In item 4C on page 9 the magnitude of at-risk populations potentially affected by the disruption or delay of emergency service vehicles should be discussed in addition to the impact added delay at rail/highway crossings will have on emergency response services. In the City of Rochester the rise of in-home patient care raises the issue of timely service for

* See attached maps of Downtown Rochester, Byron, Eyota and Dover for location of noted land uses

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of how the construction will be staged (for example, would all adjacent at-grade crossings within a 3 to 4 mile section be impacted at the same time), what type of detour routing may be needed and how vehicular traffic will be managed during the construction period. Methods for insuring that other public infrastructure, such as the main line sanitary sewer trunk line for the Dover/Eyota/St. Charles Sanitary District which directly abuts the DM&E corridor from St. Charles, Minnesota, to Eyota, Minnesota, will be protected during the construction activity should also be discussed (see attached letter from City of Dover, item E)

3. Existing investment has been made by the City of Rochester in a trail system within the railroad right of way through an agreement, which included financial compensation to the DM&E, for use of a portion of the railroad right-of-way. The linear distance of parallel trail is approximately 4800 feet, and includes two at-grade crossings of the railroad track. The potential safety implications of these arrangements under the proposed operating conditions should be discussed and potential mitigation measures identified. Where the railroad chooses to discontinue the easement rights, reimbursement adequate to permit replacement of the trail function should be provided.
4. The estimation of vehicular delays should factor in the variability of the train detection system proposed for use at the crossings and the rate of false signals* or excessively long warning times which will impact the level of delay. Additionally, the estimation of delay should be calculated based on a reasonable estimate of train speeds, not the maximum train speed. In the application materials submitted by the DM&E, an average train speed of 34 MPH was used to evaluate the competitive time advantage DM&E would have over competing rail lines for the shipment of coal to utilities in the Great Lakes region. This assumption probably provides a reasonable average speed for purposes of calculating delay to motorists.
5. Where grade separation is suggested to increase safety (see item 4D on page 10), an assessment should be included of the potential impact that will be created on the regional or local highway system by construction of a grade separated crossing due to traffic diverting to alternate travel routes.
6. For grade crossings where the crossing highway has an Average Daily Traffic (ADT) of 10,000 or more vehicles per day, an evaluation should be conducted of potential upstream and downstream traffic operation problems that will be created due to the queuing of traffic resulting from delay at the rail-highway crossings. In the City of Rochester there are four existing crossings which have an ADT exceeding 10,000 vehicles per day and by the Year 2015 six crossings are projected to exceed 10,000 ADT. These six crossings include 11th Ave NW, 4th Ave NW, US Highway 63, West Silver Lake Drive, 11th Ave NE, and CSAH 22 East (East Circle Drive).
7. The EIS proposes in Item 5(A)(2) on page 10 to only describe the potential effect of vehicular delays at new grade crossings where those crossings having an ADT of 5,000 or more. The potential effect of vehicular delays should be considered at both existing and new crossings that have or are projected to have an ADT of 5,000 or more. Preferably, the impact of the proposed level of rail operations would be assessed not only on the basis of delay but on a more inclusive or comprehensive basis that would consider the overall impact to the local transportation system in the major communities along the DM&E corridor. The evaluation should consider the costs and benefits of different grade crossing treatments in order to assess the full effect on public and private resources resulting from proposed rail operations. To effectively assess the costs associated with the increased level of rail operations, the analysis

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should identify the cumulative effect of the costs associated with traffic delay and the potential increase in the absolute number of accidents, including such factors as vehicle operating costs, travel time costs, system reliability costs and environmental costs. The analysis should determine what crossing treatment will create the greatest net benefit.

Comments on other matters referenced in 49 CFR 1105.7 which were not addressed in the preliminary Scoping Document

- Under 1105.7(e)(5)(iii), the environmental reporting requirement identifies a specific set of information that should be provided if the transport of any ozone depleting materials is contemplated. The EIS should identify whether any ozone depleting materials are currently shipped and, if so, assess the increased number of derailments, accidents or spills that would result from the increase in rail operations and proposed contingency plans for dealing with accidental spills.
- As this memorandum argued on page 2, the scale and scope of construction associated with the rebuild portion of this project is of such significance that it should be considered a rail construction for the purposes of environmental review and the complete requirements of 1105.7(e)(11) should be addressed across the rebuild portion of the project. This includes a description of maintenance of way practices and operational information (# of cars, speed of train, types of cars, motive power requirements). Proposed labor force levels should be reviewed in the EIS to assess the applicant's ability to maintain both proposed operational levels and the infrastructure itself (including staffing that will be available to respond to defective equipment calls, track closures due to derailment or natural causes such as washouts and staffing for responding to emergencies including hazardous material spills). Maintenance needs and costs that should be factored into the financial assessment of the project should be based on a Class I railroad operation and should be adequate to maintain the level of safety and to insure that required mitigation measures are maintained. An example of concerns with the current level of resources directed to maintenance activities are described in the attached letter from the City of Dover, Minnesota.
- 49 CFR 1105.7(e)(1) states that the EIS should describe any reasonable alternatives to the proposed action. It is the position of Olmsted County that the development of a bypass route that would result in the rail corridor being relocated outside the cities of Byron, Rochester, Eyota and Dover as well as potentially Kasson and Dodge Center in Dodge County, Minnesota and St. Charles in Winona County, Minnesota, should be evaluated for the purpose of determining on a comparative basis the costs and benefits associated with the upgrading and mitigation of environmental impacts along the existing corridor with the costs and benefits of building a new corridor as a response to the environmental impacts of the project. Olmsted County has identified one potential bypass route* for consideration.
- 49 CFR 1105.7(e)(3) states that the EIS should consider whether the proposed action is consistent with existing land use plans based upon consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, and that the EIS should describe any inconsistencies. Potentially significant land use inconsistencies exist in the community of Rochester, Byron, Eyota and Dover. These include:

* See attached map entitled Preliminary Bypass Route Alternative

The potential for and mitigative measures to avoid such impacts should be identified in the areas along the existing corridor.

Stream resources in both the Zumbro and Whitewater watersheds may be affected by reconstruction activities. The rail corridor abuts Cascade Creek in the Zumbro watershed, which drains to Cascade Lake. Sedimentation in Cascade Creek may affect the Lake's value as a recreational, aesthetic, and habitat resource for the Rochester area. The rail corridor is also drained by several unnamed tributaries of Bear Creek, which flow into the Chester Woods Park Reservoir, which also has significant wildlife habitat, aesthetic, and recreational values. The corridor also runs along and is immediately adjacent to the South Fork of the Whitewater River, a stream that has significant value as a fishery and as a wildlife habitat corridor. The Whitewater portion of the corridor abuts a number of colonial bird nesting sites and calcareous fens. The potential for disruption of these streams by sediment or other reconstruction related impacts and a description of measures needed to avoid these impacts should be identified.

Other evaluation elements proposed for the New Construction that should be completed for the proposed change in operations in the Rebuild Area.

- Item 8 on page 5 of the Draft Scoping document identifies three factors related to socioeconomic impacts that are proposed for evaluation relative to the new construction. This analysis should also be applied to the change in operations over the existing corridor. Impact to residential areas and communities, as well as potential impacts to existing commercial and industrial development should be evaluated, and mitigative measures that would minimize or eliminate potential adverse project impacts to social and economic resources should be identified.
- The attached letter from Brenda L. Riggott, Executive Director of the Rochester Convention and Visitors Bureau, provides an example of the concerns that arise when considering the potential impact of the railroad operations on the local economy. Ms. Riggott describes the importance of the visitor and hospitality industry to the community and how the facilities that contribute to the significant economic impact of this industry are focused largely in the downtown area in close proximity to the railroad corridor. The increased level of rail operations has the potential to create adverse impacts for this industry, which is an important element of the economy of Olmsted County.
- Item 11(A) on page 6 of the draft scope identifies the potential impact to Cultural and Historic Resources as an area of inquiry relative to the new construction. Potential impacts in the rebuild area resulting from the proposed change in operations should also be evaluated in terms of the impact it may have on historic structures and districts already listed on the National Register of Historic Places. Examples of structures in the City of Rochester include the Avalon Hotel property* at 301 North Broadway (US Highway 63) and the Rochester Armory* at 121 North Broadway. The EIS should describe these resources and identify measures that would minimize the impact of the proposed operations on these resources.
- Item 12 on page 7 of the draft scope proposes that the impact of the new construction on recreational opportunities should be described. This same analysis should be conducted in the

* See attached map of Downtown Rochester for location of properties listed on National Register of Historic Places

- a significant number of residences within close proximity of the railroad corridor;
- the presence of unique populations associated with a) the Federal Medical Center*, which is part of the U.S. Department of Justice Federal Bureau of Prisons, which directly abuts the rail corridor, and b) the Mayo Medical Center* in Rochester, which is located within 4-8 blocks of the rail corridor. Both of these land uses would face significant logistical challenges in terms of evacuating individuals in the case of derailment or the accidental spill of hazardous materials;
- the location of parks* with a high level of active recreation programs on a daily basis directly abutting the railroad corridor; and
- potential impacts to rural agricultural operations and township road maintenance needs created by the severance of private crossings and low volume rural roadways that may be necessitated by implementation of the proposed operations.

Another land use factor that should be addressed is additional right of way needs for the railroad operations as it relates to providing the necessary number of passing sidings needed to make the operational plan function, as well as for expanded or new staging and marshaling yards. Currently in Olmsted County the existing right of way is generally 100' in width, with reduced right of way widths at some locations within the City of Rochester. The need for additional right of way and potential locations for these elements of the operation plan within Olmsted County should be identified on a preliminary basis in the EIS.

- 49 CFR 1105.7(e)(9) states that consultation with the state water quality officials and the US Army Corp of Engineers should be conducted to a) determine whether the proposed action is consistent with applicable Federal, State or local water quality standards; b) whether permits under Section 404 of the Clean Water Act are required for the proposed action; and c) whether any designated wetlands or 100 year floodplains will be affected. The replacement or rehabilitation of bridge and waterway structures to support higher speed traffic and heavier traffic loads is integral to the success of the project. The magnitude of the reconstruction and replacement activity for bridges and waterways associated with the Rebuild portion of the project is significant, as evidenced by the \$118,000,000 included in the capital spending estimate for the Rebuild allocated for bridge replacement and rehabilitation. Given the scope of this activity, the requirements of 49 CFR 1105.7(e)(9) should be applied where bridge replacement is anticipated. Additionally, the impact of rebuilding some 600+ miles of 100 year old roadbed should be studied to determine the impact on air quality and ground and surface water resulting from the disturbance of accumulated wastes from historic operations.
- Where sidings or other new construction such as marshaling or staging yards is proposed along the Rebuild portion of the corridor, evaluation of the potential impact to wetlands and other receiving waters from oil or lubrication drippings or leachate from freight cars should be completed and measures to minimize the pollution of potential receiving waters identified. See attached letter from Terry Lee, Coordinator of Water Resource Services for Olmsted County, for further information on this matter.
- Based on the Olmsted County Biological Survey, the location of hydric soils as determined by the Soil Survey for Olmsted County, Minnesota, and the National Wetlands Inventory, it appears that there are significant areas of wetlands and wetland wildlife habitat along the existing rail corridor. Reconstruction activities in the corridor have the potential to adversely affect these wetlands due to disruption of nesting habitat and to siltation of wetland areas.

* See attached maps of Downtown Rochester, Byron, Eyota and Dover for locations of noted land uses

rebuild area where active recreation facilities directly abut the rail corridor and may be affected by the change in operations associated with this project.

Other matters of community concern

- The proposed project will have impacts on the provision of public services operationally as well as financially. An estimate of how the proposal will affect the financial resources of the public in terms of a) lost tax base, and b) increases in local taxes, should be completed. These estimates should take into account efforts by communities to mitigate the potential impacts created by the operations of the railroad, including the costs of property acquisition and construction necessitated by crossing improvements or environmental abatement measures.

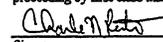
Olmsted County and the Olmsted County Dakota, Minnesota & Eastern Task Force stand ready, willing and able to provide additional information to the SEA in order to permit the DEIS to fully examine the environmental impacts of the railroad's proposal and in order to plan measures that will determine that the proposal should not proceed or fully mitigate the impacts of the DM&E proposal on Olmsted County. Olmsted County has confidence in the judgement of the SEA in determining the timeframe for completion of the EIS for this project however, we would respectfully suggest that a review of the scope of this project and the unique nature of a reconstruction of this magnitude suggests that significantly more time should be allowed. The Task Force appreciates your considered attention to this matter and looks forward to working with the STB on this project.

For Olmsted County and the DM&E Task Force,

 7/9/98
Raymond F. Schmitz
County Attorney
Olmsted County, Minnesota

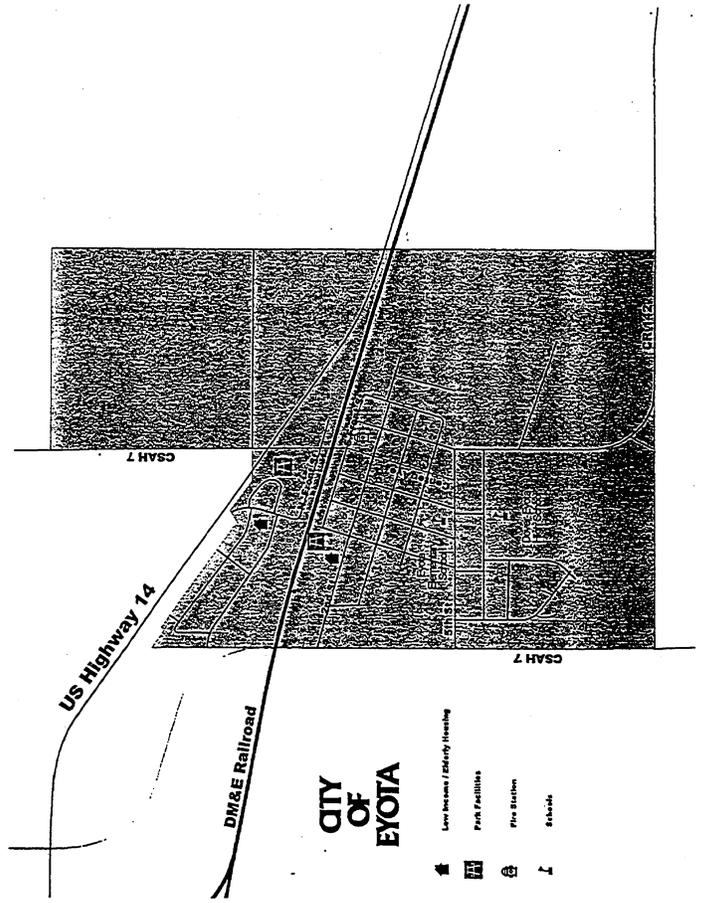
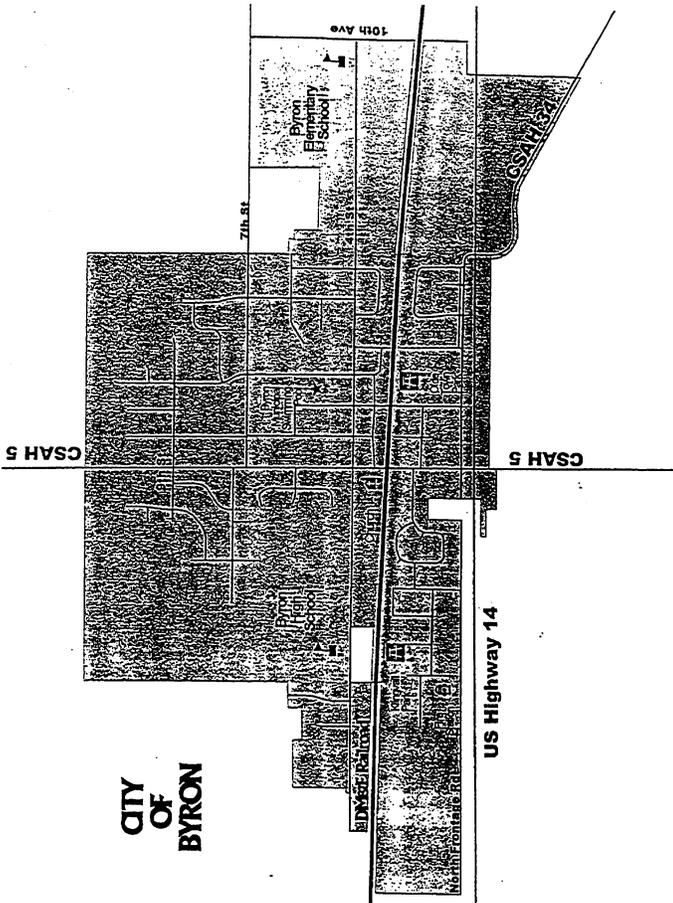
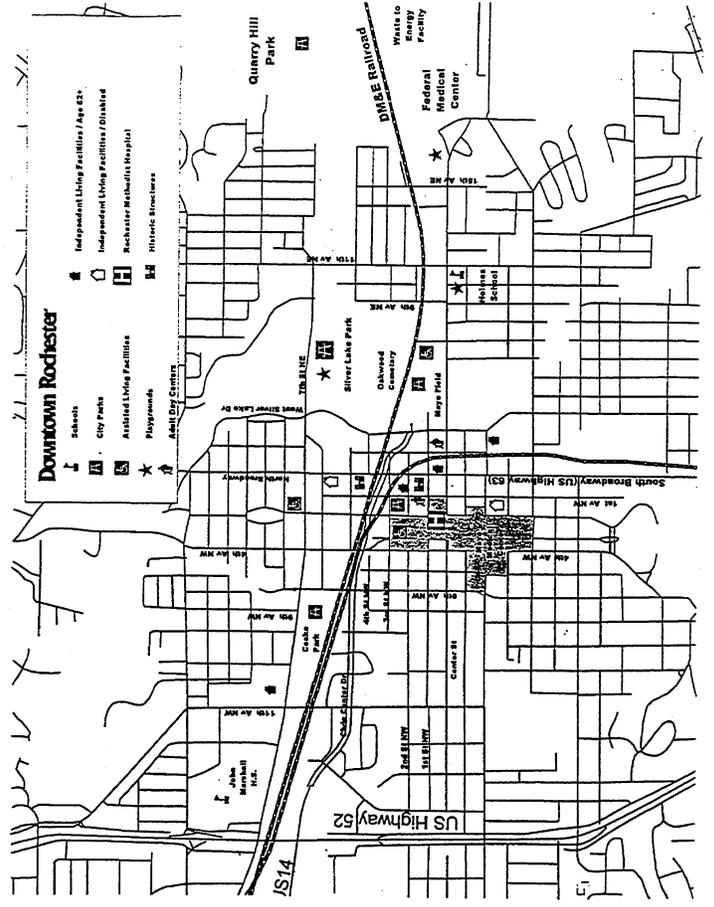
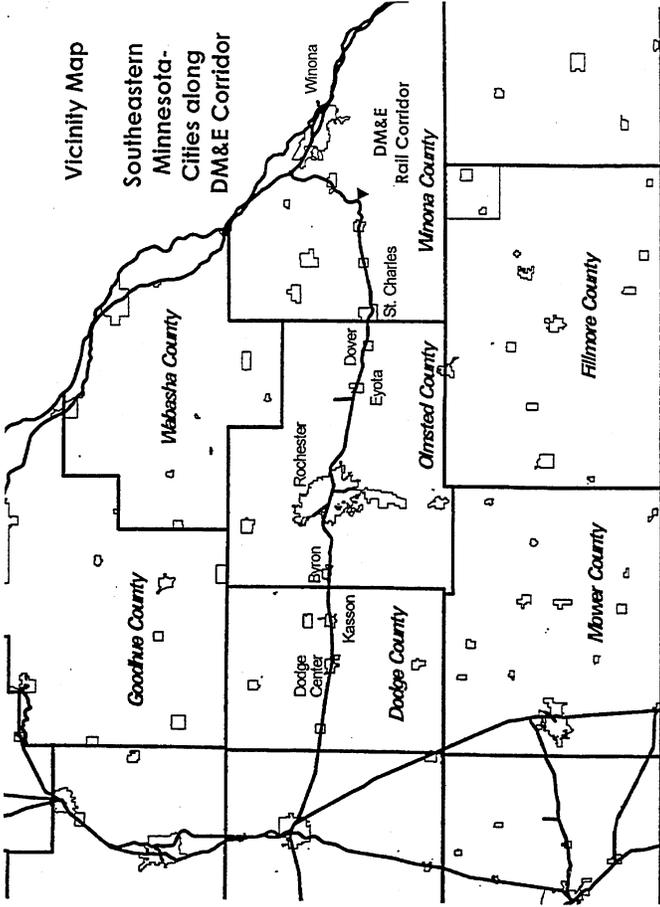
CERTIFICATE OF SERVICE

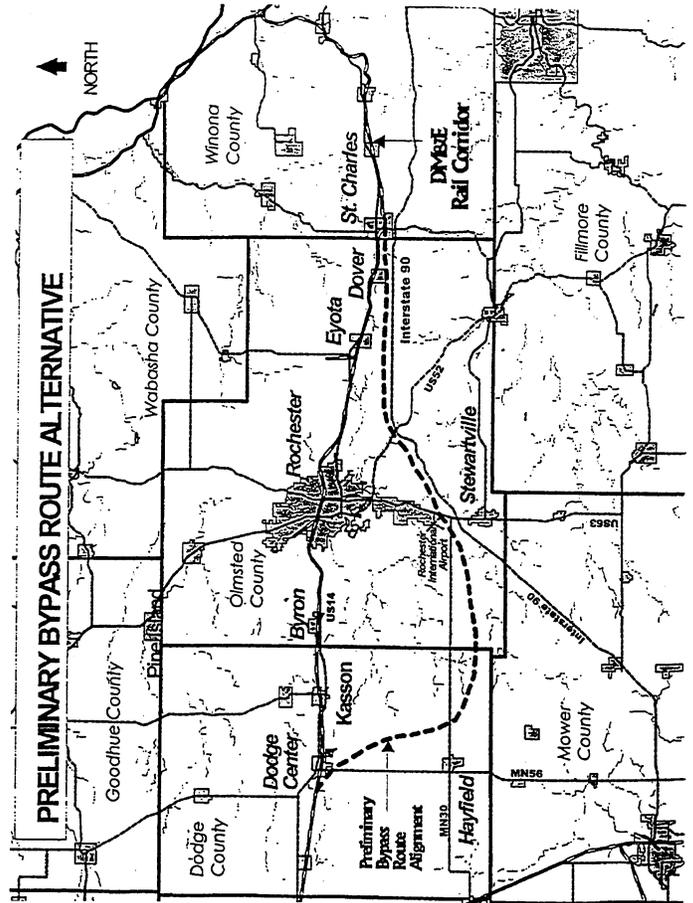
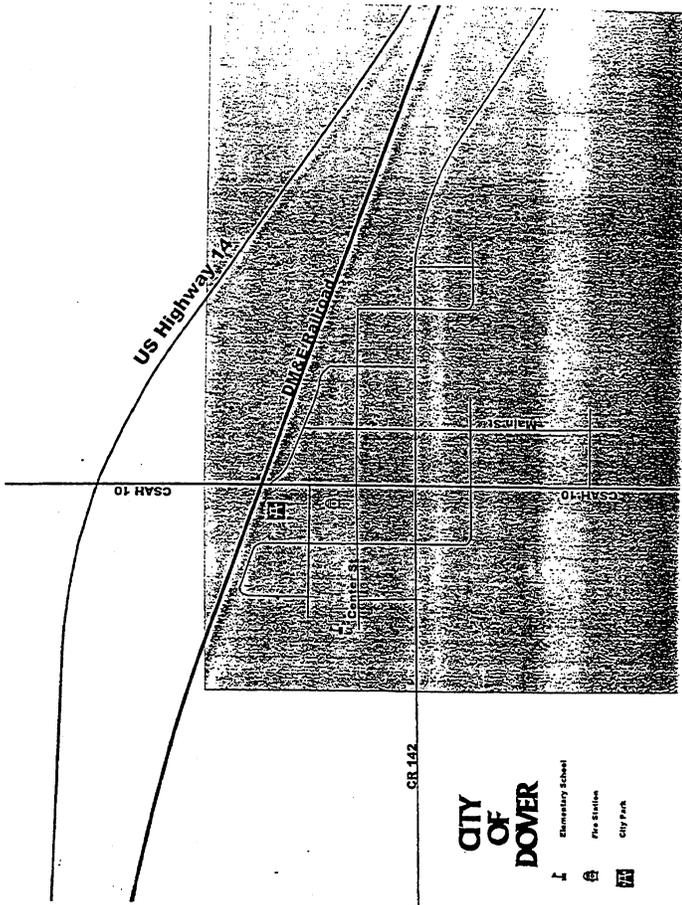
I certify that I have this day served copies of the document upon all parties of record in this proceeding by first class mail.

 7/9/98
Signature Date

Vicinity Map

Southeastern
Minnesota-
Cities along
DM&E Corridor





150 Chancery Lane • Mankato • Minnesota 56001-4149
 Phone: (507) 388-4546 • Fax: (507) 388-7704
 Internet: leighy@mninc.net



July 9, 1998

Ms. Victoria Rutson
 Section of Environmental Analysis
 Surface Transportation Board
 1925 K St.
 Washington, DC 20423

ENTERED
 Office of the Secretary
 JUL 16 1998
 Part of
 Public Record

RE: Proposed new DM&E right-of-way through Mankato, Minnesota

Dear Ms. Rutson:

As a former resident of a house located a block away from the Union Pacific right-of-way through Mankato, Minnesota, I am keenly aware of the negative impact of freight trains passing through residential neighborhoods. That impact includes:

- Increased safety risks, primarily to children
- Increased noise
- Increased air pollutants from diesel emissions and in some cases from the freight loads themselves
- Increased stress on the structural integrity of nearby buildings as a result of ground tremors created by passing trains
- Decreased property values in those neighborhoods
- Decreased quality-of-life in those neighborhoods

When railroad routes service local businesses and industries, we must look at the potential trade-offs and make decisions based on the general good of the community as a whole. However, when new routes are proposed which do not benefit the community yet impact the community in a purely negative way, then those new or expanded rights-of-way must never be allowed.

Such is the case of DM&E's proposed new route through Blue Earth County and Mankato, Minnesota. I am sure you have heard comments from Blue Earth County and county residents regarding the environmental impact of a proposed rural route. I support these arguments, yet wish to make the point clear that creating a new route for DM&E coal trains through Mankato adjacent to the existing Union Pacific tracks would be even more disastrous for this community.

I urge the Surface Transportation Board that, when making its decision as to the environmental validity of DM&E's proposal to haul coal from Wyoming through Minnesota, it consider the decidedly adverse effect that these trains will have on the communities and their citizens which are located along the way.

Sincerely,

Leigh Pomeroy
 Member, Planning Commission
 City of Mankato



CITY HALL
 207 Lafayette Street
 P.O. Box 378
 Winona, MN 55987-0378
 FAX: 507/457-8212

July 29, 1998

Stephen G. Thornhill
 Project Manager
 Burns and McDonnell
 9400 Ward Parkway
 Kansas City MO 64114-3919

RE: Finance Docket No. 33407

Dear Mr. Thornhill:

The City of Winona is extremely interested in the DM&E Powder River Expansion Project, Finance Docket No. 33407. The DM&E Railroad provides service to the Winona community but the trackage for the DM&E ends before the city limits of Winona. The City wants to be part of the review process for the Project since a majority of the traffic from the Project will be transferred to railroads going through Winona.

The Canadian Pacific Railroad operates what is called the main line through Winona. This CP track cuts through the City on a diagonal from the northwest to southeast of the City. The line runs by residential areas through most of the City. Track is as close as a hundred feet from residential homes. An increase in the traffic on the line from the DM&E Project will have an impact on the surrounding residential areas.

The City has held public information meetings with DM&E officials to collect information concerning the impact of the proposed project. The following is a list of the issues which have been presented and which are of concern to the City:

- Condition of the existing CP rail to handle the heavier faster trains.
- Safety on the existing CP rail concerning the over 40 rail crossings in the City. Are the current crossing protections adequate for the more frequent and faster trains?
- Environmental issues like the increased noise to the surrounding residential property owners some within a less than a hundred feet from the tracks.



Courthouse
501 S. Minn. Ave.
St. Peter, MN 56082-2533

August 14, 1998

Stephen G. Thornhill
Burns & McDonnell
9400 Ward Parkway
Kansas City, MO 64114

RE: DM& E Railroad Expansion Project

Dear Mr. Thornhill:

Attached please find the unanimously adopted resolution of the Nicollet County Board of Commissioners objecting to the proposed routing of the DM&E Railroad expansion project through Nicollet County.

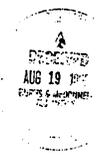
As detailed in the resolution, there are a host of environmental issues which make the location of a rail line in Nicollet County undesirable, including:

- Multiple Minnesota River crossings
- Flood plain disruption
- Erodible soils
- Steep slopes
- Interference with critical public and private drainage systems

In addition, the disruption of main transportation routes and the elimination of existing farm and rural home sites would have a far-reaching negative effect on the county as a whole. Though Nicollet County supports the concept of modernizing the existing rail corridor, the extension of new rail lines through Nicollet County would be an environmental mistake.

I strongly encourage you to consider the issues and concerns raised by Nicollet County in determining your recommendation of a specific route for the DM&E Railroad expansion.

Sincerely,
Tina Rosenst
Tina Rosenstein, Director
Environmental Services Department



Attachment

WATER QUALITY PLANNING AND ZONING SOLID WASTE
An Equal Opportunity and Affirmative Action Employer
Telephone 507-931-6800 Toll Free 1-800-247-5044
Fax Number 507-931-9220



- Where will the marshalling yard be built? How will it impact the train switching in Winona?
- Application does not address the amount of tonnage that may be going to the Mississippi River. Can the existing infrastructure on the River in Winona handle the increased traffic?
- Concern that products currently being shipped over the lines will be pushed to a secondary position with the coal traffic having priority. This would have a significant impact on existing users in Winona.
- Are grade separations possible and how can it be funded? Who will determine where they should go?
- Emergency vehicles can be blocked by trains and concern over the ability to provide service on both sides of the rail.
- Coal dust from trains.
- Currently trains park on the tracks and block crossings while waiting to move through town, will this continue?
- Biggest concern is that the DM&E project does not go into Winona but will be transferred to other rail lines who travel in the City, how do we get improvements and issues addressed by the other rail lines?
- What is the number of trains to be traveling through Winona per day?
- Impact on the adjacent homes with the increased traffic and speed? Will these owners be compensated for the decrease to property value?
- Location of marshalling yard should not be in the City which has limited land
- Where would the transfer facility between rail and river be in Winona?
- Improve the signal system to assure the trains move through town and do not wait on the tracks and block crossings.
- Concern over the times vehicles and pedestrians try to beat the trains. How to improve access points to eliminate the attempts to beat the trains?

I submit these comments for your review of the environmental issues related to this Project. If you need any clarification or further information, please contact me.

Sincerely,
Jerry Miller
Jerry Miller
Mayor

- cc. Senator Paul Wellstone
- Senator Rod Grams
- Representative Gil Gutknecht
- State Senator Steve Morse
- State Representative Gene Pelowski
- Administrative Law Judge Joseph Nacy
- Kevin Schieffer, President DM&E

RESOLUTION CONCERNING A PROPOSED ROUTING OF THE DM & E RAILROAD THROUGH A PORTION OF NICOLLET COUNTY

WHEREAS, Nicollet County supports the concept of the modernization of existing rail corridors to improve the efficiency of the movement of goods and people in and through Southern Minnesota, and;

WHEREAS, The DM & E railroad company has proposed an alternative route for a railroad line to go through portions of Nicollet and Belgrade Townships in Nicollet County, and;

WHEREAS, this proposed route would cross the Minnesota River in 2 places, causing a potential to increase the flooding of the Minnesota River onto lands adjacent to the flood plain, and;

WHEREAS, the route proposed would climb from the river bottom up over two hundred feet to the top of the river bluffs, along drainage ways that serve the upland farm land drainage systems, and;

WHEREAS, the soils in the drainage ways and ravines of the proposed route consist of types that pose severe limitations to any development or use due to the steep slopes and instability of disturbed soils leading to excessive erosion problems, and;

WHEREAS, the proposed route would cross 5 county roads, 6 township roads and 2 main state highways, posing safety issues and traffic disruptions, and;

WHEREAS, the proposed route would eliminate or severely degrade numerous farm sites in the townships, and;

WHEREAS, the proposed route would disrupt public and private drainage systems serving the prime farm lands that the railroad would cross, causing a potential drop in the productivity and value of the farmlands;

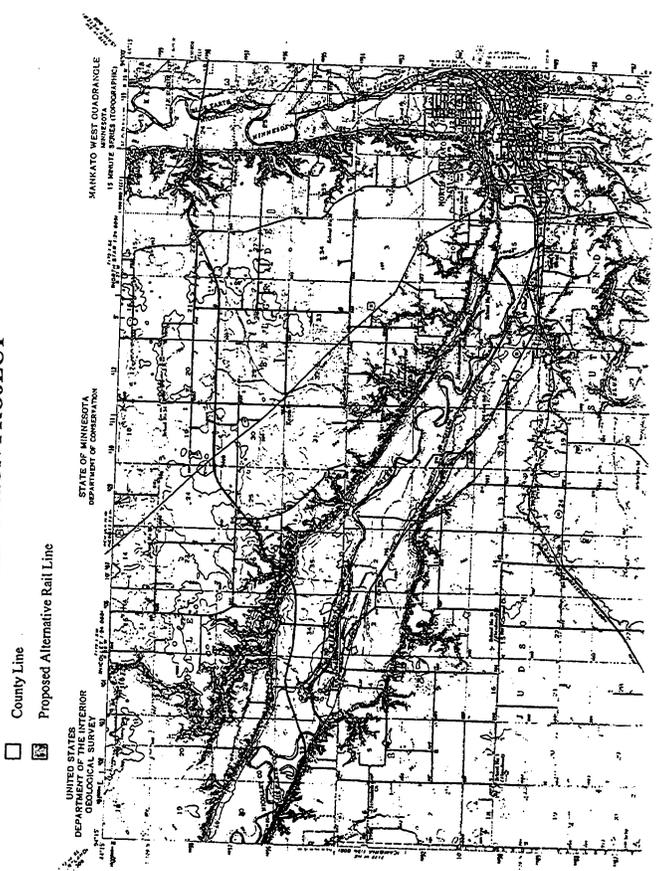
THEREFORE, BE IT RESOLVED, that the Nicollet County Board of Commissioners objects to the proposed routing of a new rail line for the DM & E railroad through Nicollet County.

Date: Aug. 11, 1998

Clifford Wenner
Clifford Wenner, Chairman
Nicollet County Board of Commissioners

ATTEST:
Robert Podhradsky
Robert Podhradsky
County Coordinator/Clerk to the Board

DM&E RAILROAD EXPANSION PROJECT



190724

Rochester Area Economic Development, Inc.

August 21, 1998

ENTERED
Office of the Secretary
AUG 26 1998
Part of
Public Record



Ms. Elaine Kaiser
Chief SEA
Surface Transportation Board
1925 K. Street NW
Washington, DC 20423-0001

Re: STB Finance Docket #33407

Dear Ms. Kaiser:

I am writing concerning the DM&E's powder basin expansion project. Rochester Area Economic Development, Inc. (RAEDI) is a private, non-profit economic development group serving the citizens of Olmsted County, Minnesota. Our mission is to facilitate private investment and the creation of jobs for current and future residents of the area.

Outside of the potential indirect benefits accruing from improvement of the rail line and increased competition for the distribution of coal, we see no direct economic benefit to this proposal. The commodities moved by train will continue to move through this area with very little opportunity for value add. Given the lack of apparent direct benefit, we do not see this as an economic development project and, therefore, have adopted no position on this matter. For the purposes of discussion, however, we believe there are several relevant questions that need to be addressed. We believe that you will be attempting to resolve many of these questions as you deliberate the merits of this proposal.

If this project is completed, there will no doubt be a number of environmental and safety impacts that need to be addressed. Accessibility to fire, police, medical services, and impacts to neighborhoods are all major issues. How many rail crossings will need to be upgraded? How many overpasses and/or underpasses will need to be constructed? What impact will train vibration have on the calibration of sensitive medical equipment located at the Mayo Clinic? What specific actions need to be taken in order to offset any negative impacts? Who will take these actions and at what cost?

In addition to environmental and safety issues, there are a number of financial questions. How well has the DM&E historically managed its finances? Have sources and uses of cash been properly matched? What do various financial measurements of profitability, solvency, and liquidity tell us about DM&E's current and proposed financial condition? Who will finance this expansion? What risk factors are associated with this financing? Will railroad customers (i.e., utilities) provide the financing? Are contracts for service guaranteed? How many customers do they have now? How many will they have? Further yet, what is the financial condition of these customers? In other words, how solid are the projected accounts receivable?

A Public and Private Partnership for Economic Development

220 South Broadway • Suite 100 • Rochester, MN 55904 • Phone 507-288-0208 • Fax 507-282-8960

Do projected returns support the expenditure of funds for overpasses, rail crossings, bypasses, etc.? What happens if the utilities turn away from coal generation and to some other source of energy? Finally, will this project result in new market competition or merely reshape it?

Every operating and financial assumption must be challenged and scrutinized very carefully for there is no doubt that a substantial amount of taxpayer money will be spent on remediation of perceived impacts. Therefore, whether acknowledged or not, the public will share the downside risks associated with this project. We hope answers to these questions and the many others that no doubt have been asked are considered as you deliberate the merits of DM&E's application.

Respectfully,

ROCHESTER AREA ECONOMIC DEVELOPMENT, INC.

Gary W. Smith, CED
Executive Vice President

GWS:tmb

cc: Kathy Lytle
Paul Wilson



112 RIVERFRONT DRIVE, P.O. Box 999, MANKATO, MN 56002-0999

191584 B60

September 28, 1998

ENTERED
Office of the Secretary
OCT 14 1998
Part of
Public Record



Office of the Secretary
Case Control Unit
STB Finance Docut #33407
Surface Transportation Board
1925 K. Street N.W.
Washington, DC 20423-0001

Re: Proposed DM & E Project, Mankato, Minnesota

To Who It May Concern:

I am writing on behalf of the Mankato Area Chamber and Convention Bureau Board of Directors in Mankato, Minnesota. Many of our members are concerned about the DM & E project due to safety and noise issues. We are also concerned about our office building which is located in a depot next to the railroad tracks, and a bike trail that runs on the other side of the tracks.

The Chamber has hosted a meeting with DM & E officials to review the proposal. We have attended public hearings presented by DM & E. It has been made very clear that the City, Citizens or Chamber could not stop the proposed project due to powers of eminent domain.

The basic philosophy of the Chamber is to promote business and in many respects this project may benefit the region. However, we must do everything possible to assure this project is not detrimental to existing businesses and avoid a negative impact on our present quality of life.

On behalf of these businesses we request a system be put in place to mitigate potential negative impacts of the proposed project through operating conditions that the railroad must adhere to.

We would like to be included in the process and have input regarding the project and its impact on existing businesses along the proposed route, the historically registered Depot, and a very popular bike trail.

Thank you for your consideration.

Sincerely,

Maureen Gustafson
President/CEO
Mankato Area Chamber and Convention Bureau

MG:ls



Brown County Highway Department
1901 North Jefferson Street
New Ulm, Minnesota 56073

Engineer
(507) 354-2313
Fax (507) 354-6857
Maintenance
(507) 354-4758

MEMORANDUM

DATE: September 29, 1998
TO: Whomever it may concern...
FROM: John M. Grindeland, County Engineer
RE: Inventory of at-grade crossings in Brown County

For the County intersections the following descriptive 'levels of safety' will be addressed in the narrative:

Level I: This level is an uncontrolled intersection, cross-bucks only.

Level II: This level involves the installation of cross-bucks, 'STOP' signs, and 'Watch for trains' signs.

Level III: This level involves the installation of cross-bucks, a 'flashing warning light', a yard/pole light, and signage that says 'STOP when flashing'.

Level IV: This level involves an urban installation, that includes pre-warning signs w/ cross-bucks, flashing lights, drop gates/arms and street lights.

It is also suggested that new concrete or rubber crossings be installed during reconstruction. This should have been done previously, but now would be the time.

Investigation and Inventory:

On Monday, September 21, 1998, Mr. Gordon Lorenzen, Brown County Highway Maintenance Superintendent, and myself visited each 'at-grade' crossing that is under this Department's jurisdiction. The following is a synopsis of what we found and what is determined to be the improvement necessary:

Intersection w/ C.S.A.H. No. 34 (Urban):

The railroad intersects the street at a 'skew' angle. It is an urban crossing with urban traffic concerns. While upgrading the bed and track in this location, a consideration to lower the grade is recommended. This should address some of the concerns of the City. This intersection has a 1997 'Average Daily Traffic' of 900, and warrants an upgrade to Level IV.

Intersection w/ C.S.A.H. No. 35 (Urban):

The railroad intersects the street at a 'skew' angle. It is an urban crossing with urban traffic concerns. This intersection has a 1997 'Average Daily Traffic' of 3400, and warrants an upgrade to Level IV. The number of rail lines left after reconstruction may warrant a 'double set' of gates/arms and lights.

Intersection w/ C.S.A.H. No. 10 (Rural):

The railroad intersects the roadway at a 'skew' angle. The terrain and skew make it difficult to see approaching trains, both during the daytime and at night. This intersection has a 1997 'Average Daily Traffic' of 160, and warrants an upgrade to Level III.

Intersection w/ C.S.A.H. No. 11 (Urban):

The railroad intersects the street at a 'skew' angle. It is an urban crossing with urban traffic concerns. The proximity to TH 14 is a concern for traffic back-up during a crossing. This intersection has a 1997 'Average Daily Traffic' of 355, and warrants an upgrade to Level IV.

Intersection w/ C.S.A.H. No. 12 (Rural):

This railroad intersects the roadway at a 'skew' angle. The terrain and skew make it difficult to see approaching trains, both during the daytime and at night. This intersection has a 1997 'Average Daily Traffic' of 60, and warrants an upgrade to Level II.

Findings:

The majority of the existing County road crossings are a mixture of Level I & II. The existing Level II installations are a poor representation of safety, with deficient engineer grade stop signs and cross-bucks set at improper heights. Any and all signs, and cross-bucks, installed for safety purposes, such as these, should be of V.I.P. grade or Diamond Grade quality, and installed according to the M.U.T.C.D.. Anything else is unacceptable.

Intersection w/ C.S.A.H. No. 2 (Rural):

The railroad intersects the road at a 'skew' angle. The terrain and skew make it difficult to see approaching trains, both during the daytime and at night. The 'sight triangle' is compromised by a grove of trees on the east side of the road, outside the right of way. This intersection has a 1997 'Average Daily Traffic' of 280 and should be upgraded to a Level III.

Intersection w/ C.S.A.H. No. 4 (Rural):

The railroad intersects the roadway at a 'skew' angle. The terrain and skew make it difficult to see approaching trains, both during the daytime and at night. This intersection has a 1997 'Average Daily Traffic' of 600 and is at present a Level III. This present installation should be reconditioned as a Level III, and made serviceable for years to come.

Intersection w/ C.S.A.H. No. 3 (Urban):

The railroad intersects the street at a 'skew' angle. It is an urban crossing with urban traffic concerns. This intersection has a 1997 'Average Daily Traffic' of 850, and warrants an upgrade to Level IV.

Intersection w/ C.S.A.H. No. 5 (Urban):

This railroad intersects the roadway at a 'skew' angle. It is an urban crossing with urban traffic concerns. This intersection has a 1997 'Average Daily Traffic' of 1,250, and warrants an upgrade to Level IV.

Intersection w/ C.S.A.H. No. 7 (Rural):

This railroad intersects the roadway at a 'skew' angle. The terrain and skew make it difficult to see approaching trains, both during the daytime and at night. The proximity to the Village of Cobden and the existence of the grain elevator warrants an urban concern in a rural setting. This intersection has a 1997 'Average Daily Traffic' of 220, and warrants an upgrade to Level III, at a minimum.

Intersection w/ C.S.A.H. No. 8 (Rural):

This railroad intersects the roadway at a 'skew' angle. The terrain and skew make it difficult to see approaching trains, both during the daytime and at night. This intersection has a 1997 'Average Daily Traffic' of 600, and warrants the existing Level III to be reconditioned.

Intersection w/ C.S.A.H. No. 27 (Urban):

The railroad intersects the roadway at a 'skew' angle. It is an urban crossing with urban traffic concerns. This intersection has a 1997 'Average Daily Traffic' of 980, and warrants an upgrade to Level IV. The proximity to TH 14 is of concern for the back-up of traffic during a crossing.

Of major concern are the 'skewed' approaches and the lack of an unobstructed 'sight triangle' at most County crossings. The rural agricultural nature of Brown County adds the possibility of crop obstruction within a 'sight triangle'. And the severity of winter snows adds the concern for high snow banks as an obstruction. The higher traffic counts on County roadways increases the conflict with the train traffic. This is the justification for Level III upgrades at the rural intersections.

Township Roadway Intersections:

With regards to rural township intersections, the conditions stated above are true for most. The difference is that most township roads are considered to have 'less than 50 A.D.T. (cars per day)' for traffic volumes. This equates to 2-3 vehicles per hour during daytime, and 1-2 vehicles per hour during the night. This lower amount of traffic could mean an accident is less likely to occur. A minimum of a Level II installation is recommended, but I think each intersection should speak for itself and be duly considered for proper safety measures.

Unknown considerations:

--It would be of great importance to know where the railroad will be constructing the 'bypass sidings' through Brown County. Their location will greatly affect the determination of necessary safety measures for the roads they intersect. This is especially true when a train could be expected to reach a length in excess of 1-1.5 miles!

--AND, DM&E plans to expand their traffic to 40+ trains per day, with 120+/- cars per train, going back and forth from Wyoming to Winona and the Mississippi River. Is this traffic to be constant throughout the day, 24 hours a day?

--Worst case scenario...40 trains per day...that's a 120+/- car train every 36 minutes all day long, night and day! Time delays, at an intersection, are as follows:

assuming a 1.5 mile long train...	@ 45 mph = 66 ft/sec = 2 min 0 secs = 1.33 hrs/day
	@ 40 mph = 59 ft/sec = 2 min 15 secs = 1.5 hrs/day
	@ 35 mph = 51 ft/sec = 2 min 36 secs = 1.7 hrs/day
	@ 30 mph = 44 ft/sec = 3 min 0 secs = 2 hrs/day

These delays do not appear to warrant any great concern for urban or rural traffic in Brown County. The impatience of people, especially urban populations, bolsters an exaggerated perception of inconvenience.

Conclusion:

As shown throughout history, 'change' is the one constant. The 'change' in the railroad business is long overdue. People have to accept 'change', and will over time. History has shown this to be fact. 'High speed commuter rail' between metropolitan areas, along with urban 'commuter rail' within metropolitan areas, seem to be the next best step for relieving the traffic and transportation problems of today's society.

In the history of automobile transportation the people eventually demanded better, safer and more efficient highways. A mixture of four & six lane interstate highways have become mandatory in the urban and rural environment. The impatience of people and the flow of traffic demanded an increase in the speed limits. But people were being killed, for one reason or another.

Public outcry demanded more safety measures. Thus engineers developed personal restraints, and the seat belt, in numerous forms, was invented. Still people died...Because not everybody bucked-up! Then the air-bag was invented, and many lives have been saved...But still, children died...Because the bag was too powerful! Now the proposal is going toward collision avoidance alarms...But people will still die! Why? Because people are people, and no matter how much you educate them, they are still going to do stupid things!

Train/automobile collisions are going to happen! It cannot be 100% unavoidable! For this reason, it is in everybody's best interest to furnish the 'most reasonable protection' you can. Do this and the finger of 'neglect and blame' cannot be pointed back at you when the inevitable occurs. I think what I propose is reasonable, is what Brown County and the Townships want for their residents, and is what they deserve!

Thank you for your time and consideration in this matter.



Mayor Chuck Canfield
201 4th Street SE - Room 281
Rochester, MN 55904-3782
Phone: (507) 285-8080 Fax: (507) 287-7979

November 3, 1998

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

Re: Finance Docket No. 33407
Dakota, Minnesota & Eastern
Railroad Corporation -
Construction Into The Powder
River Basin

Dear Secretary Williams:

Rochester, Minnesota, the largest city along the proposed DM&E route to the Powder River Basin, is in receipt of an October 29, 1998, letter from the president of the DM&E advising us that we will not be receiving any proposal for a "community action plan." Reduced to its essentials, this means that the DM&E will offer no proposal to mitigate, let alone eliminate the environmental harms to this community that would result from the operation of approximately 37 trains per day.

In light of the DM&E's letter, which arrived a full month after the expected date of a DM&E mitigation proposal, Rochester has no choice other than to state its complete opposition to the DM&E's proposal.

In the event the Board does not deny the DM&E's application in the order it is expected to issue later this month, Rochester does not believe that the Board's Draft Environmental Impact Statement should limit its consideration of mitigation measures to those applicable to the current DM&E alignment. Accordingly, Rochester will, at the earliest possible date, submit its request that the DEIS consider an alternative corridor for DM&E operations around the City. We urge the Board to give full consideration to such a route. If the DM&E is unwilling even to make a mitigation proposal, the Board must be prepared to take the only action that will eliminate the severe damage to the human environment that would result from approval of the DM&E's application.

Respectfully submitted,

Chuck Canfield
Chuck Canfield, Mayor
City of Rochester

John Hunziker
John Hunziker, Council President
City of Rochester

- c: Honorable Linda Morgan (courtesy copy)
Honorable Gus Owen (courtesy copy)
Victoria Ruston (courtesy copy)
Paul Wilson, Chairman, Olmsted County Board
Governor Arne Carlson
Senator Paul Wellstone
Senator Rod Grams
Representative Gil Gutknecht
All Congressional Representatives

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COUNTY ADMINISTRATION
151 4TH STREET SE
ROCHESTER MN 55904-3710
507/285-8115 FAX 507/287-2893



4 January 1999

Honorable Vernon A Williams
Secretary, Surface Transportation Board
1925 K Street NW, Room 704
Washington, DC 20423-0001-

Re: Application of the Dakota, Minnesota and Eastern Railroad, FD 33407

Olmsted County is a party of record in these proceedings and has submitted various comments during the transportation phase of this application. Olmsted County's stated position that the upgrade of the track to accommodate a coal pipeline railroad should not occur recognizes the need to maintain the DM&E as a functional transportation provider. Olmsted County remains committed to working with you to achieve the best possible outcome for the citizens of the county.

It has recently come to the attention of the County that another transportation project has the potential of contributing to a synergistic solution to some of the issues that are presented by the DM&E project. As you are aware the current track of the DM&E traverses Olmsted County through several municipalities including the City of Rochester. Preliminary evaluations of the number of coal train impacted elements along this route shows that there will need to be major mitigation efforts made.

One possible mitigation solution that has been suggested is the rerouting of the DM&E to a corridor outside some of the affected municipalities in the county. The possible synergistic solution comes from a current study that is being funded by the Federal Railroad Administration (FRA), the State of Wisconsin and Minnesota and others evaluating the possibility of a high speed rail link from the Chicago area to Minneapolis/St. Paul in a corridor involving Milwaukee, Madison, and Rochester.

Contributing to the attractiveness of this possible link is the location of Interstate Highway 90, (with Interstate Highway 35 some 60 miles to the west) and the Rochester International Airport. The intersection of these transportation links could potentially serve as a major intermodal hub for the movement of goods and passengers. The economic potential to the involved carriers and the Midwest area is significant. Since a major argument for the extension of the DM&E into the Powder River basin is the need to fund continuing operations of the current trackage by hauling coal, the existence of alternative income sources must be explored.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER
BOARD OF COMMISSIONERS
FIRST DISTRICT MIKE PODOLAK
SECOND DISTRICT CAROL J. KAMPER
THIRD DISTRICT PAUL F. WILSON
FOURTH DISTRICT MATTHEW FLYNN
FIFTH DISTRICT JAMES M. ROSSMAN
SIXTH DISTRICT JEAN R. MICHAELS
SEVENTH DISTRICT JEFFREY THOMPSON

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The current study of the route for the passenger corridor is a phase two effort which will not be completed in time to involve the current proposal of the DM&E, except in evaluating the possible usage of a joint corridor for some or all of the two systems within Olmsted County. The potential of sharing a corridor and in having the DM&E trackage located in proximity to the intermodal facility does deserve to be explored as part of the current DM&E application.

It is estimated that a preliminary plan for such a joint corridor and facility could be available in approximately six weeks (mid-February 1999). While we are aware that there has been no date set for the closing of the comment period for the scope of the EIS, we also appreciate that work on that document is proceeding.

Olmsted County suggests that the option of collocation of the trackage of the DM&E and the study route of the high speed corridor and the potential of the creation of an intermodal facility in the area of the Rochester International Airport should be considered and we would respectfully request that we be allowed to submit details of this concept until 15 February 1999 for inclusion in the scope of the EIS.

Sincerely,

Paul Wilson
Paul Wilson
Chair, Olmsted County Board

- cc: Federal Railroad Administration
Victoria Rutson, STB
Senator Paul Wellstone
Senator Rod Grams
Representative Gil Gutknecht
Mayor, Chuck Canfield, City of Rochester

To the Honorable Linda Morgan, February 8, 1999

The Salem Town Board Of Olmsted County Minnesota would like to thank your for responding to our letter.

We are still opposing the By Pass for the D.M.E.

The board also feels that we are not given a fair chance.

The City of Rochester and the Olmsted County Commissioners who are on the task force have taken it upon themselves as individuals to send maps and Correspondence when it has not been voted upon (Commissioner Paul Wilson and County Attorney Ray Schmitz).

We would be pleased if you would visit this site to see the impact on the safety issue with Rual road closings and splitting up the farms.

Thank you,

Leola Rud Clerk

Salem Board

7774-50th St. S.W.

Byron, Minnesota

RECEIVED SURFACE BOARD CHAIRMAN LINDA MORGAN FEB 12 12 28 PM '99



ROCHESTER PUBLIC SCHOOLS INDEPENDENT SCHOOL DISTRICT #535 Rochester, Minnesota



March 25, 1999

ENVIRONMENTAL DOCUMENT

Elaine Kaiser, Office of Secretary Case Control Unit, STD Finance Docket #33407 Surface Transportation Board 1925 K Street Washington, D.C. 20423-0001

RE: DM&E Rail Traffic Increase Proposal

Ms. Kaiser,

I am writing in response to DM&E's proposal to increase rail traffic to 37 trains per day in Rochester, MN which will also effect many outlying areas including my hometown of Winona, MN.

In Winona, which currently has more rail traffic than Rochester, I have noticed many disturbing effects the rail system has had on emergency medical and health care responders. I have seen many ambulances, fire engines, & police vehicles stalled at railroad crossings because of trains blocking their paths to accidents, hospitals, etc. This has resulted in lives lost!! I can see this is going to be a common problem in the Rochester area if this traffic increase is approved and it will even worsen the already poor accesses in the Winona area.

A fact which amazes me is that Rochester doesn't have any Oxbow gates at crossings. I know within the Winona area, they have installed these as a result of loss of life. If there is an increase in traffic, DM&E should bear the cost of installing Oxbow gates. Must we wait for lives to be lost before anything is done?

Being an employee of the Rochester School District, I worry about the safety of our students. ISD 535 buses cross 373 railroads daily. With an average of 50 students per bus, this would impact 18,650 students a day for regular school travel. Has the safety of our children been considered?

DM&E has the worst safety record of any Class II railroad in the entire U.S. They are not subject to any rules or regulations that limit the transportation of propane or anhydrous ammonia. These are common products shipped by DM&E and are dangerous to our environment. I have seen numerous derailments and with the increase in traffic, chances are derailments are going to increase. Mayo Clinic and two of their hospitals are within a few hundred feet of the tracks. Has anyone considered the impact a derailment with toxic chemicals will cause, especially near health facilities?

These are amongst a few facts I have gathered. I could continue with more; however, I'm sure you are getting flooded with mail on the same concerns. Please take these facts into consideration as a part of the environmental impact study.

Thank you much for taking the time to read my argument against the DM&E traffic increase.

Sincerely,

Handwritten signature of Kimberlee J. Greene, Kimberlee J. Greene, PO Box 627, Winona, MN 55987

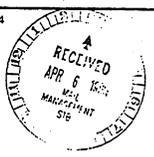


Rochester Public Schools

Independent School District #535 615 7th St. SW • Rochester, Minnesota 55902-2052

Business Services • Telephone (507) 285-8592 • FAX (507) 287-1344

ENVIRONMENTAL DOCUMENT



March 29, 1999

Ms. Elaine Kaiser Environmental Section Surface Transportation Board 1925 K Street NW Washington, DC 20434-0001

Dear Ms. Kaiser:

The DM&E proposal to expand into the Powder River Basin does have some compelling economic reasons why it should proceed. However, in the case of Rochester, MN and the Mayo Clinic, there are some very compelling reasons why the project should not be built through Rochester, but instead should bypass the city on a new alignment.

The Mayo Clinic is THE preeminent medical research facility not only in the state of Minnesota, not only in country, but in the world. People with unlimited financial resources who could go anywhere on the planet for health care come to Rochester, MN to be cared for at the Mayo Clinic. King Hussein of Jordan, Yassar Arafat, Presidents and Mrs. Ford, Reagan, Carter and Bush, the Saudi Royal Family, golfers Nick Faldo and Arnold Palmer - the list could go on and on and on - all come to Rochester for health care for one reason - the Mayo Clinic provides the best care in the world.

In addition, the Mayo Clinic is the preeminent medical research facility in the world. It is not a stretch of the imagination to say that research being done at the Mayo Clinic could very possibly find the cure to such scourges of mankind as cancer, multiple sclerosis, or AIDS. The work done at the Mayo Clinic could literally save hundreds of thousands, maybe millions of lives around the world as they develop cures for these diseases and those cures are shared around the world. As such, the benefit that the Mayo Clinic gives to mankind through the sheer volume of the people in the world that can positively be effected is of much greater weight to the populace of our planet than the DM&E proposal is.

The Mayo Clinic can do this research and find these cures for one reason only - it attracts the best researchers in the world to come and live among the cornfields of Minnesota because it is the place where the best medicine is practiced in the world and where the cutting edge of medical research is occurring. Mayo Clinic researchers come from all over the globe. 55 languages are spoken in the local school district. Mayo Clinic can attract these researchers because the quality of life in Rochester is very high. Rochester also attracts patients from all over the world because it is a quiet and peaceful city where people come for restful healing.

The DM&E proposal to route 37 coal trains per day at build out through Rochester less than a block from the Mayo Clinic will severely impact the quality of life of Rochester and will detract

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from the reasons why researchers come to live and work here, and why patients come for healing here. It is important to note the even during the height of railroad traffic in the 1940s, the line through Rochester was a low density line in terms of the number of trains. The infrequent trains and relatively low speed trains were a minor concern to the Mayo Clinic and the residents of Rochester for the whole history of the line's existence through Rochester.

The work that is done by the Mayo Clinic is so important to humanity that the Mayo Clinic should be protected at all costs. It is not just a Rochester asset, it is not just a Minnesota asset, it is not just an American asset. It literally is an asset to all of humanity.

The Powder River Basin has approximately 69 billion tons of identified coal reserves, or enough to last at least a century at current usage rates. With the Clean Air Act of 2000, the use of Powder River Basin coal will increase. The DM&E will have the opportunity to compete and make a very good return for stockholders for a very long time to come.

A bypass around Rochester has been costed out by the respected railroad engineering firm of TKDA of St. Paul, MN at approximately \$115 million. That additional cost when amortized over a 100 year life span of the project seems a very small price to pay to ensure that the activities of the Mayo Clinic are able to continue unhindered by outside disruptions. The DM&E will be spending approximately \$40 million to upgrade the existing line through Olmsted County and Rochester anyway. Those funds could be put toward the construction of a bypass, thereby limiting the incremental cost to \$65 million. Perhaps a funding mechanism of shared railroad, city, county, State and Federal funding could be put together to bridge the gap and allow a bypass to be constructed.

The DM&E may actually accrue operational benefits from a bypass. The route selected by TKDA, while being 10 miles longer than the current route through Rochester, actually eliminates approximately 200 feet of vertical drop and vertical climb into and out of the Zumbro River Valley, which bottoms out at Rochester. It may be possible for DM&E trains to proceed at a much faster pace around a bypass route with its relatively moderate grades, thereby potentially saving on both fuel and crew costs.

The Mayo Clinic is really the only thing that separates Rochester from any other city across the DM&E route, or any other city along rail lines in the United States. Where else in the world do you have a world class research and healing medical facility within one block of what will become high density railroad tracks? The answer is no where else. The Mayo Clinic and the research that is done there is an international asset to all humanity.

Please consider routing the DM&E around Rochester. They will still be able to return a profit on their project, they may actually accrue operational advantages, and the Mayo Clinic will be left to continue its important research and healing activities in a quiet, restful environment. All mankind will thank you and the STB for such a wise decision in the long run.

Sincerely,

Handwritten signature of Paul Bougeois, Paul Bougeois, CPA, Director of Business Services



The Rochester Public Schools
Independent School District #535
Edison Building - Rochester, Minnesota 55902 - Telephone 507-285-8551
Office of The School Board

April 1, 1999

Ms. Linda Morgan, Chair
Surface Transportation Board
1925 K Street
Washington, DC 20423-0001

Dear Ms. Morgan:

This letter concerns Finance Docket No. 33407, the application by the Dakota, Minnesota and Eastern Railroad Corporation (DM&E) for Construction into the Powder River Basin.

The Rochester Public School District, ISD #535, had declared its opposition to the proposed upgrade to the DM&E railroad in its resolution of 9/22/98 (attached).

The Rochester Public School District provides educational services for all public school students in Rochester, Minnesota including K-12 education plus Community Education and Adult Literacy. We serve a population of 15,913 K-12 students. The rationale for our opposition to the proposal is primarily safety, but also based on our evaluation of the impact of this project on quality of life and the future of our community.

There are several issues related to safety. The most widespread safety issue for our community is the risk of multiple at-grade crossings. Our school district provides daily transportation to and from school for over 10,000 students. Our bus routes have 373 rail crossings daily. Numerous recent fatal and otherwise traumatic incidents involving at-grade crossings convince us that running 38 high-speed trains daily through our city brings substantial unnecessary risk of injury and death to our students.

The second major risk introduced into our community is related to the transportation of hazardous materials. Estimates using DOE figures indicate that with 38 trains daily running a six-mile corridor through the heart of our city, there is a substantial risk of a derailment with toxic gas release when such substances are carried. In the event of a toxic gas release (such as anhydrous ammonia, propane or chlorine) the areas at risk of fatal exposure include five public and parochial schools, with nearly 3,000 students, all less than 300 meters from the rail line. With the worst safety record of any rail line its size, the DM&E is unlikely to perform better than these worrisome estimates. Several recent derailments of DM&E trains, one resulting in evacuation of a town less than 20

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miles from Rochester (Kasson, Minnesota) brought reality to our concern before the current proposal became public.

We share the concerns expressed by other Rochester community leaders regarding the other adverse impacts of expanded rail service including increased noise and vibration levels, and multiple factors which will contribute to degradation of air quality in Rochester. All of these will have a negative impact on our schools.

Rochester Public Schools strongly urge you to reject the proposal to increase rail traffic through Rochester, Minnesota.

Sincerely,

Handwritten signature of Carol Carryer

Carol Carryer
President

- cc: Governor Ventura
U.S. Representative Gutnecht
U.S. Senator Wellstone
U.S. Senator Grams
U.S. Senator Oberstar
U.S. Representative Sabo

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DOCUMENT

SCHOOL BOARD
Independent School District #535
Rochester Public Schools

Date: September 22, 1998 Briefing Date(s): N/A
Item No: V. A.
Department: Business Services Previous Action(s): N/A
Submitted by: Paul Bourgeois

BRIEFING ITEM

TOPIC: Resolution to Express Appreciation to the City of Rochester and Olmsted County for Their Efforts In Securing a Bypass or Other Mitigation Measures for the DM&E Railroad

BACKGROUND INFORMATION

The Dakota, Minnesota & Eastern (DM&E) Railroad is in the process of securing authority from the Federal Government to upgrade and expand their railroad for the purpose of hauling coal from Wyoming to terminals on the Mississippi River. The DM&E's route currently bisects the City of Rochester and runs through the center of Olmsted County.

The proposed upgrade and expansion will result in an increase of railroad traffic through the City of Rochester and Olmsted County. Train traffic is expected to increase from four daily trains moving at 10-20 miles per hour to 36-40 daily trains moving at 40-45 miles per hour.

The increase in train traffic will significantly impact public safety in the City of Rochester and the safety of children riding buses or walking to and from school. Buses will carry school children across the mainline railroad tracks in Rochester an average of 373 times per school day with thousands of students on those buses.

The City of Rochester and Olmsted County are in the process of studying alternatives and negotiating with the DM&E to develop either a bypass of Rochester or to develop a high level of noise mitigation and traffic and public safety improvements.

RECOMMENDATION

It is recommended that the School Board of Independent School District #535 adopt a resolution expressing its appreciation to the City of Rochester and Olmsted County for their efforts in either securing a bypass for the City of Rochester or significant mitigation measures to address the local safety and economic impact concerns.

RESOLUTION

WHEREAS, the DM&E Railroad is proposing to increase the number of railroad trains in the Rochester area from four to 36-40 per day; and

WHEREAS, the train speeds will be increasing to 45 miles per hour; and

WHEREAS, the Rochester Independent School District #535 Transportation Services transports 14,000 students each day; and

WHEREAS, crossings of the DM&E tracks cannot be avoided so 373 busloads of Independent School District #535 students must cross the DM&E Railroad tracks each day; and

WHEREAS, thousands of school students walk across the railroad tracks each day for school, family, or youth recreational activities; and

WHEREAS, the increase in train traffic may make Rochester less attractive to relocating families with school age children and less attractive as a destination for medical and other visitors; and

WHEREAS, our healthy local and area economy which is vital to all area citizens and all local government units would be negatively impacted; and

BE IT RESOLVED that the School Board of Independent School District #535 recognizes the serious safety and economic concerns related to the proposed increase in DM&E railroad traffic; and

BE IT FURTHER RESOLVED that the School Board expresses its appreciation to the City of Rochester and Olmsted County for their efforts in either securing a bypass for the City of Rochester or significant mitigation measures to address the local safety and economic impact concerns.



Rochester Convention and Visitors Bureau

April 6, 1999

Elaine Kaiser, Chief Section of Environmental Analysis
STB Finance Docket #33407
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001H

Dear Ms. Kaiser:

On behalf of the Rochester Convention & Visitors Bureau, I am writing out of great concern for the negative impact that the DM & E Railroad proposal will have on Rochester's hospitality industry.

The visitors staying in our community are medical patients, leisure and corporate travelers and convention attendees. It is important that our guests can move easily throughout our city and enjoy the small city atmosphere that attracts them here.

Rochester has 55 hotels and 5,000 hotel rooms city-wide. This number is equivalent to that of Minneapolis, MN. Of these hotels, 40 hotel properties and over 3,700 hotel rooms are within nine blocks of railroad tracks.

Rochester is not the typical city of 80,000 people. Our marketability as a tourist and convention destination is negatively impacted by the issues raised above.

Sincerely, Ed Piruka, Chairman Board of Directors Rochester Convention & Visitors Bureau

120 South Broadway, Suite A • Rochester, MN 55904-6500



Park and Recreation Department City of Rochester

201 Fourth Street SE • Room 150 • Rochester, MN 55904 (507) 281-6160 • FAX (507) 281-6165

April 6, 1999

Surface Transportation Board Elaine Kaiser Environmental Section 1925 K Street NW Washington, D.C. 20423-0001

Dear Ms. Kaiser:

The City of Rochester Board of Park Commissioners is writing in regard to the proposed Dakota, Minnesota & Eastern Railroad Powder River Basin expansion project.

As you may be aware, the City of Rochester is consistently chosen as one of America's most livable cities. There are many reasons for this.

The City has a number of parks, bike/pedestrian trails and youth athletic fields in the vicinity of the DM&E tracks. These are used by hundreds of thousands of people annually.

Another example of these concerns is the East Park facility. This is a community park that is the site of many youth soccer and football fields.

Another example is the Quarry Hill Nature Center, which is a 270 acre City park that is bordered on the south by the existing DM&E line.

As indicated by the above examples, the proposed DM&E expansion project through our community will be of little, if any benefit to the City of Rochester.



Commissioners would like to request the Surface Transportation Board include the study of a bypass alternative around the City of Rochester within the scope of the Environmental Impact Statement.

Respectfully,

John Withers President at Large, Rochester Park Board

Rod Toomey 1st Ward Representative

Paul Olander 2nd Ward Representative

Robert Lyons 3rd Ward Representative

Doris Amundsen 4th Ward Representative

Susan Lemke 5th Ward Representative

Mayor Canfield



April 8, 1999

VIA OVERNIGHT MAIL

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

Re: Finance Docket No. 33407 - Dakota, Minnesota & Eastern Railroad Corporation - Proposed Construction into the Powder River Basin: Final Scope of Study for the Environmental Impact Statement

Dear Ms. Kaiser:

The Rochester Area Chamber of Commerce, an advocacy group representing over 850 businesses in Rochester, Minnesota wishes to express our current position and concerns about the above project.

At our regular February meeting, the board of directors voted to oppose the DM & E Railroad's current expansion proposal through the city of Rochester.

Chamber members advocate maintaining and enhancing a transportation system that assures the safe, efficient movement of people and goods; and promotes economic growth and competitiveness.

Potential threats to the above from the proposed plan would put our business community in harm's way. The economic vitality and continued expansion of our tax base through the revenues these businesses provide could be jeopardized.

The Rochester Area Chamber of Commerce asks that you consider these concerns and assist us in the effort to create a win-win for Rochester and DM & E Railroad.

Respectfully,

Wm. A. Sepic President

Jerry Watson Chairman-of-the-Board

220 South Broadway • Suite 100 • Rochester, MN 55904 • 507-288-1122 • Fax 507-282-8960

Affiliated Chamber of Commerce since 1965

THE CITY OF OWATONNA



540 West Hills Circle
Owatonna, MN 55060-4794
Ph. (507) 444-4300
FAX: (507) 444-4394

April 15, 1999

Attn: Elaine K. Kaiser
Chief Section of Environmental Analysis
Environmental Filing
Office of the Secretary
Case Control Unit
STB Finance Docket No. 33407
Surface Transportation Board
1925 K Street NW
Washington DC 20423-0001



Dear Ms. Kaiser:

Please accept this letter as the City of Owatonna's response to STB Finance Docket No. 33407 as it relates to the forthcoming Environmental Impact Statement covering the DM&E's expansion/reconstruction from Wyoming through South Dakota and Southern Minnesota. This Docket is generally referred to as the formal "Scoping Document" for those issues intended to be addressed in this forthcoming EIS and Owatonna is currently included in Paragraph C on Pages 8 and 9 as Alternates O1, O2, and O3.

The City has had ongoing negotiations with the DM&E for the last several months, we are committed to reaching a negotiated agreement with them, that addresses our concerns for safety, noise and crossing improvements. However, we do have

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The City of Friendliness and Beautiful Parks*

We believe that the Board has the responsibility to mitigate and direct reasonable solutions on these issues that relate to the broader spectrum of the overall rail system. Additionally, we believe the Board has the obligation to pursue any feasible alternative to the unnecessary loss of farmland, environmental impacts on wetlands, and disruption of our future growth.

We would request that the STB give the utmost consideration to the connecting link issue in a reasonable, cost-effective manner. We appreciate the working relationship that we have established with the DM&E Railroad, and look forward to a successful project.

Sincerely,

Greg L. Sparks
City Administrator

concerns regarding the proposed alternatives for an interface with the I & M Rail Link for the following reasons:

1. For over 100 years there has existed an on-grade "diamond" crossing within Owatonna allowing the east-west train system to cross on-grade with the north-south train system. This crossing is located at approximately DM&E milepost 88.1.
2. In recent years, the Union Pacific has retained ownership of approximately 5+ miles of the current DM&E trackage through Owatonna more or less centered on this crossing location. The Union Pacific cannot physically access this segmented five miles of trackage. Their north-south system crosses this segment at a grade separation of over 20 feet and they do not own right-of-way that can connect on this segment.

The City of Owatonna's position is that the I & M Connection Alternates O2 and O3 are unnecessary if the southbound connection can be accomplished with switching located at or near the existing "diamond" crossing.

It is our position that the Surface Transportation Board implement the requirement for the installation of the above mentioned switch with the Union Pacific. This has the advantage of eliminating the need for pursuing any kind of new connecting rail line through our adjacent prime agricultural countryside and future residential growth area.

10 Civic Center Plaza
Post Office Box 3368
Mankato, Minnesota 56002-3368

Phone: (507) 387-8600
Fax: (507) 388-7530
<http://www.ci.mankato.mn.us>



August 24, 1999

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: City of Mankato, Minnesota - Comments on the potential impacts and required mitigation measures respecting the Dakota, Minnesota and Eastern Railroad Company project to construct access to the Powder River Basin in Wyoming and upgrade its existing line through the City of Mankato.

STB Finance Docket No. 33407

Dear Mr. Williams:

The City of Mankato, Minnesota is a party of record to the above referenced proceeding and would like to preserve its ability to enter further commentary into the record for further development in the upcoming Draft Environmental Impact Statement.

This letter is to alert the Board that by October 10th, the City of Mankato will be filing additional data and comments relative to the potential impacts and required mitigation for our community which are associated with this project. Mankato wishes to ensure that the materials and comments it will deliver are included in the record and that its recommendations are included among the requisite mitigation measures.

The timing of our upcoming comments has been occasioned by lengthy negotiations with the DM&E which on July 6, 1999, resulted in the execution of a Community Partnership Agreement as initially proposed by the DM&E. Our intended comments will primarily relate to certain impact studies being conducted by the City as well as the U.S. Army Corps of Engineers.

In the spirit of cooperation, the City of Mankato entered into an Agreement with DM&E even though complete agreement was not reached as to several remaining issues which continue to be discussed between the parties. Consequently, we would like the Board to review in detail these issues which remain and which are, in large part, occasioned by the lack of information associated with the unknown impacts of the proposed increase in train operations of the DM&E and Union Pacific Railroad at Mankato.

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Mankato is an affirmative action, equal opportunity employer.
Printed on recycled paper with soy ink.

Honorable Vernon A. Williams
August 24, 1999
Page 2

The Board should not view Mankato's execution of the Community Partnership agreement as tacit approval or support for the "existing corridor" alternative. Rather, the City continues to be concerned with the environmental impacts of increased rail traffic within that existing corridor alternative through the heart of the City. We hope that the existence of the Community Partnership agreement does not in any way influence Surface Transportation Board's commitment to undertake an objective analysis and comparison of the environmental impacts of all of the proposed Mankato Bypass alternatives, including the "Southern Bypass." I might add that at one time the Southern Bypass was for obvious reasons considered the preferred alignment by DM&E. As the environmental impacts operations plans, design parameters are available, and negotiations evolve on the unresolved agreement issues, the Southern Bypass could in fact become the far more superior alternative.

The scope of our upcoming comments will include comments on the following issues, which remain of concern to Mankato:

- (1) The nature and extent of future train operations of DM&E and the Union Pacific Railroad which are presently undetermined that will be permitted at Mankato as the result of the approval of this transaction;
- (2) The impacts to occur as the result of those increased operations on safety health, congestion generally and with respect to certain specific concerns; namely (a) noise and vibration impacts on Mankato's flood control system over which these additional trains will run; (b) noise and vibration impacts on structures and significant community facilities adjacent to the operating corridor including adverse impacts upon a large percentage of Mankato's low and moderate income housing;
- (3) The appropriate mitigation measures necessary to minimize those impacts, including the bypass proposed by DM&E as a routing alternative.

Thank you for the opportunity to participate in this proceeding.

Very truly yours,

CITY OF MANKATO, MINNESOTA

Patrick Hentges
Patrick Hentges, City Manager

cc: Eileen M. Wells

THE CITY OF OWATONNA



Peter W. Connor, Mayor

540 West Hills Circle
OWATONNA, MN 55060-4794
Ph: (507) 451-4640
Fax: (507) 451-9194

March 13, 2000

The Honorable Linda Morgan
Chairman
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

RE: DM&E Railroad Project; Finance Docket #33407

Dear Chairman Morgan:

This is to advise you that the City of Owatonna hereby withdraws its proposal to further the study of a by-pass around Owatonna, Minnesota. We have signed a Community Partnership Agreement with the Dakota, Minnesota, and Eastern Railroad (DM&E) that addresses mitigation on the current route. The DM&E first submitted a Community Partnership Agreement to Owatonna on January 8, 1999. The past 14 months have been a difficult time for our community, given the fears and concerns that increased rail traffic would have on our entire city. However, the lines of communication and negotiation remained open with the DM&E, which resulted in a mitigation agreement that addresses many of the concerns of the City Council and Owatonna residents. Issues of noise mitigation on properties adjacent to the tracks are addressed partially through "whistle free" crossings, and it is expected that the STB will appropriately address sound mitigation in the EIS.

While we have reached a mutually satisfactory agreement, there are issues where we expect to make continued progress as additional information develops, more project and market certainty is established, and as our solid relationship with the DM&E goes forward. In particular, we would like to emphasize our strong desire for the O4 Alternative (as defined in DM&E's June 9, 1999, letter to the STB-SEA chief Elaine Kaiser - relevant paragraph attached) for the I&MRL connection. This is far preferable to building a new loop connection, and it makes sense to use this existing connection.

Concerns remain, but we believe that DM&E's approach to this issue has resulted in a better plan for the citizens of Owatonna than could be achieved solely through the regulatory process. We responded to the opportunity to submit a by-pass in part so that we had further opportunity to hear the advice of other industry and legal experts, and study the facts of this case and DM&E's proposal. We recognize that there are significant costs, environmental concerns, and negative impacts associated with creating a by-pass route.

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The City of Friendliness and Beautiful Parks*

The Honorable Linda Morgan
March 13, 2000
Page -2-

Accordingly, please discontinue any further analysis relative to the Owatonna by-pass proposal submitted to you by the city on June 10, 1999. Thank you for the opportunity to develop this issue, and for your consideration.

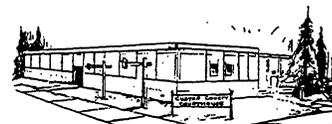
Sincerely,

Peter W. Connor

Peter W. Connor
Mayor

Enclosure

CUSTER COUNTY Board of County Commissioners



420 Mt. Rushmore Road Custer, South Dakota 57701

January 14, 1998

Governor William Janklow
Office of the Governor
500 E. Capitol
Pierre, SD 57501-5070

Senator Drew Vitter
South Dakota State Senator
321 Main St., Box 41
Hill City, SD 57745

Rep. Gordon Pederson
Box 312
Wall, SD 57790-0312

Rep. Helena Hassard
RR 1 Box 149-AB
Hot Springs, SD 57747-9418

Dana White
Surface Transportation Board
1925 K. St. NW, Suite 500
Washington, D.C. 20423

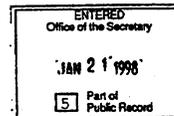
Re: DM&E Railroad/New Rail Corridors

Dear:

The Custer County Board of County Commissioners respectfully submits it's position with respect to the construction of any new rail corridor across Custer County. The purpose of the new rail corridor is to haul Powder River Basin coal from Wyoming across rail lines in Custer County. A new rail corridor is not justified in that DM&E has existing rail lines whereby DM&E has access to Powder River Basin coal.

Furthermore, construction of a new rail corridor across Custer County will cause significant adverse impacts to Custer County with respect to the environment and the infrastructure of many ranching operations in Custer County. Custer County residents deserve to have a voice in the decision-making process for any new construction of rail lines in the County of Custer.

The Custer County Commissioners oppose the use of eminent domain by DM&E Railroad for the purpose of taking private lands of Custer County residents to construct new rail corridors across Custer County. This taking is unjust and outside the intent of the eminent domain laws. A private company taking private lands by way



Page 2.
January 14, 1998.
Re: DM&E Railroad/New Rail Corridors



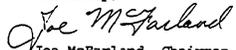
City of Huron

Mary A. Pearson, Mayor
(605) 352-1660

of eminent domain flies in the face of the basic property rights which all of us hold dearly.

The Custer County Board of County Commissioners hereby respectfully requests that you oppose any new construction of rail corridors in and through Custer County when that construction involves the taking of private property via eminent domain.

Sincerely,


Joe McFarland, Chairman
Custer County Commissioners

JM/sw

June 18, 1998

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

Attention: Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing

To whom it may concern:

Fifteen short years ago, our community and region were deeply involved in efforts to stop the planned abandonment of our railroad service by the Chicago Northwestern (CNW) Railroad, due to the catastrophic effects it would have upon our AG-BASED economy. Through the combined efforts of South Dakota's Congressional delegation, our then Governor, and many communities up and down the line in central South Dakota, the line was not abandoned but became the Dakota, Minnesota & Eastern (DM&E) Railroad. Through this effort, our state and region retained critically important rail service. Now, in 1998, we are here to discuss with you another critically important issue, the proposed expansion by the DM&E Railroad.

Specifically for the Huron community, our city was built based upon the railroads coming to the prairies of South Dakota. Huron has been home to several different railroad operations across the past century, and is the base of DM&E's Locomotive maintenance operations today employing 85+ people in our community. As such, Huron grew up with railroading and the city has been planned and built to provide a harmonious partnership between its residents and railroad operations. From previous written testimony provided to the Secretary Vernon A. Williams, you understand that the existence of rail service to allow for the movement of AG commodities, and others, to market is absolutely essential to our economic well being. We view the planned expansion of the DM&E Railroad to transport low sulphur coal as an activity that will be beneficial to our local AG economy as well as other areas such as long term viability of the rail line, local employment, tax base, and other parameters.

In preparation for your review process, Huron's City commission and myself have assembled a citizen task force to review the proposed expansion, and identify possible problems and solutions. This group to date has reviewed the project's plans, research comparable cities along the Union Pacific line in Nebraska, conducted a public input session, researched the anticipated effects upon



P.O. Box 1369, Huron, South Dakota 57350

our local economy in the areas of employment & Industrial Development, and continues to review possible problems and solutions. In addition, through my office, we have facilitated a meeting of the neighboring community Mayor's of Lake Preston, De Smet, Iroquois, Cavour, Wolsey, Wessington, and Miller. Through this format, we discussed common issues with the proposed expansion.

Through these activities, we have identified the following five major categories to be addressed:

1. Safety
Crossings
Evaluation of Overpass needs
Reduction of crossings
Switching activity & automobile traffic stoppage
2. Noise
Horns & Legal Requirements
Welded Track & the reduction of noise
Silent Crossings
Noise comparisons & reduction techniques
3. Environment
Coal Dust
Reduction of Acid Rain and air pollution on the East Coast
Clean Air Act
4. Traffic Flow
Frequency of traffic blockage events and aggregate time comparisons
State Highway blockage events and aggregate time comparisons
(SD 37, US 281, US 14)
5. Other
AG Commodity price impacts (positive)
Local Employment and wages (economic impact)
Industrial Development capabilities (infrastructure)

While this list is by no means all inclusive, it does represent the general categories of interest found by the local Task Force through their received public input and activities to date. A finalized report from the committee is expected to be submitted to your agency, on or before July 10, 1998. Additionally, we will be working as a region with the aforementioned communities on the project to address our constituents concerns, and provide possible solutions to be considered on this important project.

In another area, our community suffered a major plant closure in 1997 that has had far reaching negative economic impacts throughout our region. Through the proposed construction process and permanent on going activities, many new jobs are forecasted to be created in our region. As

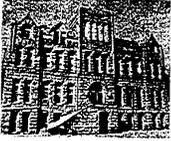
such, your proposed study of the "Socioeconomic" category is of very high importance to our region through the probable increase in employment in light of our loss of about 10% of our employment through last year's plant closure. In addition, we also believe that the project will result in better AG commodity prices in our region due to new westward connections and faster trains that speed up "turn around" time on grain hopper cars.

In closing, we as a City commission, and as community are in support of DM&E Railroad's planned expansion. We also believe your proposed review process & scope is appropriate and contains the needed categories. In addition, we would ask that you put special emphasis on the economic impact investigation in regards to AG commodity prices & service, employment, and long term possibilities for increased "Value Added" AG Processing capabilities. We look forward to working through this process with Surface Transportation Board and are hopeful of your positive review and approval of the project.

Sincerely,


Mary A. Pearson
Mayor

cc: US Senator Tom Daschle
US Senator Tim Johnson
Congressman John Thune
Governor William Janklow



FALL RIVER & SHANNON COUNTIES
COUNTY COMMISSIONERS

COURTHOUSE
HOT SPRINGS, SOUTH DAKOTA 57147
PHONE: (605) 745-5132

June 24, 1998

Steve Thornhill
Burns & McDonnell
P.O. Box 419173
Kansas City, MO 64141-6173

RE: Fall River County Commissioner's Response to the Request for Impact Information Concerning the Expansion and Construction of the Dakota, Minnesota and Eastern Railroad

The following receipt of notice of your request for the County Commissioners to provide information to you concerning what if any impact the expansion and the new construction of the DM&E Railroad will have in Fall River County, we the County Commissioners invited public comment by publishing a story in the two legal newspapers for Fall River County.

In addition to the public comment which we are attaching to this letter and incorporated herein the County would first like to address what if any impact the county government believes it would have upon the citizens and then to touch upon the issues that individual citizens have raised.

COUNTY GOVERNMENT IMPACT:

First the County is concerned about the impact the construction and expansion the railroad would have on emergency services. In particular the rural population who depends upon emergency services from municipalities located within the county. With the expansion and the construction of the new rail line it's going to create additional road crossings for fire, ambulance and other emergency vehicles to have deal with in addition to the traffic upon those rail crossings at emergency times. For these reasons county government believes that if the railroad is going to construct a new rail line, in keeping in mind that we are only two years away from the twenty-first century we believe that rather than trying to impede the existing public roads it would be to the benefit to the citizens of this county to require the railroad to build either overpasses or underpasses where they desire to cross a public road. This way it keeps the public roads accessible to emergency vehicles. We have a concern about fire suppression because of the

also have some concern that there needs to be a plan in place to control the erosion as a result of the new construction.

Additionally in line with the construction and maintenance of the railroad there becomes a question of the responsibility of constructing and maintaining fences along the railroad right-of-way. We have a large number of livestock operations in our County which would be adversely affected by the construction and expansion of the rail line. Presently it's our understanding under the law that the only requirement placed upon the railroad is to furnish the materials for the construction of the fence and its the duty of the landowner adjoining the railroad right-of-way to pay for that fence construction. It is our opinion that this, while it may be the law, is not right. Where you have livestock operations that are going to be disrupted and divided because of the rail line construction it should not be the responsibility of the adjoining landowners to subsidize that rail line construction by building the fences. We assume that if the railroad is passing through a municipality area it would be required to take sufficient steps to protect the public from crossing their rail lines and it only make sense to require them to fence out those livestock operations. Presently the State of South Dakota when it reconstructs existing public highways is responsible for fencing costs. We believe this is a responsibility that should be placed upon the rail lines.

Finally we believe that if DM&E rail line is allowed to go ahead with its expansion railroad construction it should only be done with the condition and understanding that that surface estate, once it ceases to be used by the railroad as a rail line will revert back to the adjoining property owners. Presently its our understanding under the existing state of law once a rail line is abandoned it doesn't necessarily go back to the adjoining property owners it can be used for other public accommodations. We do not believe that should be the case with this new rail line construction. Particularly when they are taking property from a land owner there should be a condition that the original grantors, successors and interest should have the right to have that surface estate revert back to them at the time the railroad ceases to use it or abandons it for railroad purposes.

Regarding citizens issues a large number of the respondents were concerned about the quality of life it would continue to have in Fall River County as a result of the railroad construction. There's a concern by landowners that will be adversely effected by the railroad that the existence of a rail line through their property will also devalue their property. We believe that this is a legitimate concern and one that needs to be adequately addressed to make sure there is proper compensation for those landowners effected by this construction and expansion of the rail line. If the real estate values go down then the county government only has the option to reduce its services or spreading that tax obligation to other landowners who are not adversely effected by the railroad because the railroad doesn't go through them. We don't feel that it's fair that other landowners have to bare the additional burden

rural nature of our county. Presently there are rural fire protection districts that are created to tax its citizens. However what we have found is that the railroads in South Dakota either have a reduced valuation for the value of their property or they make application for railroad tax credits so that they never have to pay any taxes towards governmental services and more importantly toward fire suppression services. We believe that if the DM&E is going to be allowed to expand and construct a new rail line in Fall River County it should be done with the condition that they would not be allowed to make application for any railroad tax credits under South Dakota Law.

Next we believe that there would be a tax impact on the County. We understand that the DM&E proposes to have the type of rail transportation that would conclude it from using railroad tax credits. However before that valuation can be subject to taxation there is going to have to be construction. The construction phase is going to impact the County with the need for additional law enforcement, schools and school personnel, housing and emergency services for those construction workers. We do not currently know where the construction headquarters will be based at but we know that the rail line built through Fall River County will consist of a large amount of new rail line construction. Accordingly we anticipate that there will be a number of construction workers based in Fall River County during the construction phase. Those construction workers will require housing, and the type of housing will depend upon whether or not they bring families with them. Presently we have in the past faced a shortage of housing and we can imagine that if a large number of construction workers come into our county, its going to place the demand upon housing. We have a fear that current residents who may be in low to moderate income housing may be forced out of that housing by landlords who realize that they may be able to make more off their rental property by renting it out to construction workers who have a higher amount of income than the current occupants of that housing. Additionally in the past when we have had special projects in our county such as clean-up of the old Army Ordnance Depot at Igloo we've seen the increased demand upon law enforcement and a result in the increase in the cost for providing for the criminal justice system in the County. We don't see anything that provides for the impact of those costs, the form of housing, law enforcement or criminal justice system. Additionally if the construction workers bring their families with them our school districts are going to be faced with the requirements of providing adequate facilities and school personnel to handle those additional students.

The other impact to the County from a natural resources standpoint concerns erosion control and water diversion. There are a large number of water shed areas within Fall River County in particular in the area in which the rail line is to be constructed. We need to have adequate assurances that that water shed, if its going to be effected by the construction work is sufficiently addressed to make sure that any diversion of the water shed is done in such a manner so as not to disrupt the other uses of the property. We

of the costs of county government because the rail line was allowed to construct its operations through Fall River County thereby devaluing the value of certain real property. A large number of citizens are concerned about noise suppression and the effect the railroad could have upon their life style because of their residences being constructed near the rail lines. Given the large number of trains that the DM&E Railroad plans on traveling across the newly constructed rail line we believe that these concerns are valid and that the surface transportation board needs to take that into consideration and make sure that the rail lines are constructed in such a manner as to have the most minimal impact upon residential property owners.

Finally I'm at a standpoint there is a concern of citizens of the construction of the railroad what adverse effect of the beauty of this area would have a consequential negative effect upon the tourist industry as people being willing to stop and explore the natural beauties in this area if they are confronted with a rail line that's running sixty trains a day on that rail line.

We ask you to take these concerns and issues into consideration in making a decision on the construction and expansion of the DM&E Railroad.

Sincerely,

Franklin Manke
Franklin Manke, Chairman

E.C. Helmbeck
E.C. Helmbeck, County Commissioner

Linda Mines
Linda Mines, County Commissioner



CITY OF BROOKINGS

Barb Murra
Public Safety Commissioner

Presented to STB
Monday, June 29, 1998

1615 Rubin Road
Brookings, SD 57006
(605) 602-2520 office
(605) 602-2064 home

On January 27, 1998 there was an item on the Brookings City Commission agenda related to a proposed expansion project of the DM&E railroad. At that time, there was not enough information for the City Commission to support or oppose the project. At the meeting that night, however, there was a great deal of opposition from residents in the area where the tracks go through Brookings.

After quite a lengthy discussion and after hearing arguments from both sides, the Commission voted to table the resolution of support until further information could be obtained and to remain neutral until that time. In order to obtain more direction, the Mayor formed an Ad Hoc Committee to study the issue. He gave this Committee the charge "To determine what we can do and what we can't do."

The issues being discussed are environmental and safety along with quality of life for those citizens who live very near the railroad. While the City of Brookings is concerned about every aspect, the one I am here to address today is the one pertaining to safety. This isn't to say the others aren't important only that my primary focus is on safety.

There are several issues being considered. First, there has been a request to DM&E to study the feasibility to reroute the tracks around the city. Brookings has approximately 1 mile of heavy residential in the route of the tracks. At this time, this proposal has been judged by DM&E as being impractical (in Brookings) for several reasons, including economic and impact on other property owners. Those property owners would probably become equally irate because rerouting would mean the railroad would have to take their property in order to reroute the tracks.

Second, there has been discussion regarding the feasibility of "depressing" the tracks through Brookings. This would allow trains to be less visible and less interruptive. This proposal may or may not be an acceptable alternative.

Third, there is a group advocating "no change" in DM&E's current operation. They would tolerate keeping the "status quo". This group has the support of a number of home owners and business people.

One of the major issues included in any discussion is public safety. This includes not only vehicle and pedestrian crossings but also the impact on emergency vehicles. Due to the fact that houses were built on both sides of the tracks, there already is some division of Brookings. It is a concern that the expansion will cut the town in half far more than it is today. Brookings has grown south because it is the only way it could develop. There is an Interstate Highway (29) to the East, the Sioux River to the West and State owned land (SDSU) to the North. Therefore, the City has no other alternative but to grow to the South.

The Brookings Traffic Safety Committee along with sub committees formed through the Ad Hoc Committee are starting the process to study all the safety issues. At this time, the DM&E appears to be willing to cooperate with the requests of the city. They have stated their willingness to support the safety concerns both physically and financially, indicating they would pay for the projects to secure the safety of the citizens as would be requested of them. The City must have assurance from DM&E that all safety issues will be met by the railroad so that, if (and when) the expansion is allowed, our community (as far as safety issues are concerned) will be a far safer one than what we have at the present time or will have with the expansion.

Certainly the speed of the trains is a major concern. At this time, they travel at approximately 10 to 17mph. However, in the near future that speed may increase to as much as 45-49mph. Instead of 3-4 trains per day, there may be as many as 35-37 trains per day. The impact of the speed along with the number of trains shows a definite need for every type of safety feature imaginable. Traffic arms and gates are only the beginning. Fences, berms, overpasses, underpasses, viaducts, depression of the tracks and rerouting also should be part of the solution.

If our community had not built around the railroad tracks with the type of housing we have, a part of our problem already would be solved. As Public Safety Commissioner for the City of Brookings on behalf of the City Commission and the People of Brookings, I am requesting and expecting that the STB and DM&E will do whatever it takes, in every way possible, to insure the safety of all concerned.

Cost should not be an issue in public safety.

Respectfully submitted,

Barb Murra
Barbara Murra
Public Safety Commissioner
City of Brookings
Brookings SD 57006



Housing & Redevelopment Authority

July 29, 1998

Aug 09 2 05 PM '98

RECEIVED
SURFACE TRANSPORTATION
BOARD
KINZIE

Ms. Linda J. Morgan, STB Chairman
National Surface Transportation Board
1925 K Street NW
Washington DC 20243-0001

Re: DM & E Railroad Expansion

Dear Ms. Morgan:

This is written in my dual capacity of 75 years of living as a South Dakotan and as the longtime chairman of Huron Housing. My forebears arrived along with the railroad construction crew in 1880. I grew up within half-mile of the roundhouse and railroad tracks in Huron. I have happy memories of being both lulled to sleep and hearing train whistles first thing every morning upon awakening. The state's heritage and progress is synonymous with the development and operation of the railroad. I certainly have never considered it in a negative way.

In my lifetime I have experienced in Huron prosperity, depression, drought, floods, grasshoppers, dust storms, boom and bust. Dakota Pork's closing a year ago is the most recent bust. Following each bust, Huron has survived, recovered and eventually prospered.

The opportunity presented by DM & E's project in my opinion is the greatest opportunity for our state since the coming of the railroad in 1880. What a way to usher in the next century and to insure the potential of our great state's economic development for our children and grandchildren.

I urge your active support for this project which will provide in a most positive way for South Dakota's future through the construction phase, permanent jobs with good pay, property tax revenue benefiting all South Dakotans and the availability of state of the art rail facilities for value added agriculture related industry.

Huron Housing this past year has invested over two million dollars in housing rehabilitation and new construction in Huron to assist in its continued economic growth getting ready for the next century of which the proposed railroad development should play a most significant and vital part.

Sincerely yours,

Randall Lampe
Randall Lampe
Chairman



August 27, 1998

Linda J. Morgan, STB Chairperson
National Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

Dear Linda,

On behalf of the Huron Area Chamber of Commerce, I am writing this letter in support of the proposed DM&E expansion project.

To stress our support, I am forwarding a copy of my recent newsletter column that is distributed to the community. As you will see, we see this project as a great contribution to not only the Huron community, but to the State as well.

Please let me know if I can provide any additional information.

Sincerely,

Debbie Hoops
Debbie Hoops
Executive Director

RECEIVED
SURFACE TRANSPORTATION
BOARD
KINZIE

Aug 31 4 06 PM '98
CIVIL DIVISION
KINZIE



CITY OF PHILIP

Finance Office • PO Box 408 • Philip, SD 57567-0408 • FAX: (605) 859-2266 • Phone: (605) 859-2175

Building Bridges
by Debbie Hoops
Executive Director,
Huron Area Chamber of Commerce

Power in Numbers

It's lonely at the top -- just ask any politician who has taken a stand on an issue not favored by the public. Many times in life we strive to be the best, number one, the top dog. Unfortunately what sometimes happens, is that there's only room for one when you get there, and your support dwindles.

As a membership organization, the chamber doesn't run that way. When one goes to the top, we all go. When one goes to the bottom...well, you get the point. At the Board's Retreat in August, the members spent considerable time discussing the Chamber as an advocate for the business community. Analyzing the Chamber's actions as a representative of the businesses and individuals we serve, the members agreed that future activity needs to be that of showing our power relative to the number of voices we represent.

A good example of this numbers game is from a recent survey we conducted of the members regarding the DM&E expansion project. The Board polled the members and the results were not too surprising. A whopping 92% of those responding to the survey were in support of the project. Now that's powerful. As a result of this message, the Board took a position in support of the project. Good news for DM&E; even better news for the Huron area if the project goes through.

DM&E is addressing some of the concerns that have come up. This included traffic flow, train delays, environmental concerns, and of course the speed of the trains. Safety issues have also been discussed. With the increase in trains, some concern has been addressed on whether this will affect any emergency vehicles responding to accidents. Flip the coin over and remember the positive impact the expansion project will have. An estimated 200 permanent jobs are possible for Huron and property taxes could generate \$1,142,000 for our county alone. In addition, temporary jobs during the construction phase are estimated to be 3,100 for South Dakota over a 2-year period. This is great news to anyone who is concerned about replacing Dakota Pork jobs and recruiting new people to our community.

The DM&E project is just one issue that the members will be asked to follow. The Governmental Affairs Committee has set a forum Saturday October 31 to discuss Amendment A (Property Tax) and Amendment E (Livestock Production). This meeting will provide viewpoints from both sides of the issues and will allow you to make an informed decision before voting in November.

I hope that you participated in the survey and used your right as a member to 'vote' on an important issue facing the community. Please use this same passion and share your views on other issues in the future. By taking a position and allowing your chamber to carry your voice to the community and the State, you are saying that...

Together, we can each make a difference in Huron.

Also stated in this letter is the idea that some of us, who live in remote areas, are unable to voice our opinions and are not well off. The arrogance of that statement defies rebuttal. However, let me assure you that we are quite able and often do speak our minds. We particularly respond to situations that affect us and usually do not attempt to speak on behalf of others less fortunate.

Mr. Sigl finds it difficult to see how this railroad expansion could have a significant economic impact to citizens of their area. I would propose that jobs, additional tax revenues, and a broadened economic base are significant factors in any economic development formula.

The boogey men that Mr. Sigl sees as stated in his letter, i.e. blight, reduced property values, reduction in quality of life, can be tossed out as concerns in any endeavor. They are unknowns, unmeasurable, and are at best open to interpretations that will be as varied as the people you ask.

Speaking for Philip, a train going through town with its track noise and whistle will be a brief and temporary happening. A train not going through town will be the permanent loss of two elevators and ten or more jobs. And this will only be the beginning of a domino effect on our City's economic health that something like this initiates.

Respectfully,

Nancy Ekstrum,
Mayor
City of Philip, SD

Cc: file
Gov. Wm. Janklow
D.M.&E. Railroad Oversight Committee

ENTERED
Office of the Secretary

SEP 14 1998

Part of
Public Record

August 28, 1998



Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, Room 700
Washington DC 20423-0001

Ref: STB Finance Docket no. 33407
Surface Transportation Board
Dakota, Minnesota and Eastern Railroad
Construction into the Powder River Basin

Dear Secretary Williams:

In response to a letter submitted by Arden Sigl, dated August 23, 1998.

Mr. Sigl suggests that residents in several towns had not been sufficiently informed on the D.M.&E. Rail project because they did not provide input at public meetings. I would propose that this is not the case; that Elkton and DeSmet both have wide support for D.M.&E. and that the sometimes prevalent human condition exists that people supportive of projects are not nearly as vocal as those opposed.

Mr. Sigl also suggests that local service may be in jeopardy for a multitude of reasons -- two being too much coal or not enough coal. Those are risks everyone in business deals with everyday. This project deserves a chance to "fly" or "flop" on its own merits. Our armchair economic predictions aren't very reliable.

CITY OF WESSINGTON
P.O. Box 38
Wessington, SD 57381

RECEIVED
SURFACE TRANSPORTATION
BOARD
SEP 23 2 28 PM '98
OFFICE OF
CHAIRMAN MORGAN

The Honorable Linda Morgan, Chairman
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

RE: Finance Docket No. 33407

Dear Chairman Morgan:

I would like this letter to show our support for D M & E's upcoming rail expansion. Wessington as with other small towns, had concerns about the upcoming expansion. Those concerns were with safety, noise and environmental issues, but with the recent meetings I attended in regards to the expansion being sought, I felt that my questions I had at that time were answered.

We the trustees of the City of Wessington feel that the upgrading and expansion of this track will only help our small community and surrounding area. It will add to the infrastructure of the area, and bring additional jobs and revenue to this part of the state. This along with additional amounts of agricultural commodities they will be able to haul in our area, makes this a very worthwhile project.

In closing we hope you are successful in your bid to expand and upgrade, we feel it is a win win situation for all involved.

Sincerely,

Nancy Ekstrum
Trustee President

JR/dh



Pennington County Highway Department

3601 Highway 79 South • Rapid City, South Dakota 57701-2044
(605) 394-2166 • FAX (605) 394-2168

April 6, 1999

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

Attention: Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing

RE: Finance Docket No. 33407-DM&E Railroad
Proposed Construction into the Powder River Basin

Dear Ms. Kaiser:

The proposed route (Alternative C) traverses a significant portion of Pennington County, and may impact currently guaranteed access (section lines) to landowners. This access guarantee is important to maintain for landowners.

As a mitigating measure, access needs to be maintained without cost to the local government or landowners. This may be achieved through construction of railroad crossings during the proposed development, or frontage access may also be considered. I hope this will be incorporated in the FEIS.

I appreciate the opportunity to comment on such proposals affecting the residents of Pennington County, South Dakota.

Sincerely,

PENNINGTON COUNTY HIGHWAY DEPARTMENT

Hiene H. Junge
Superintendent

WDA/lmd



Brookings, SD Railroad Bypass Proposal/Historical Perspective

The DM&E Railroad may argue that the proposed Brookings by-pass creates delays for proposed construction for both technical and environmental review reasons. However, consideration should be given to the DM&E efforts over approximately a 1½ year period to avoid responding to the community efforts to designate a feasible practical by-pass route around Brookings.

Highlights of these efforts are summarized as follows:

1. The first public meeting with Brookings citizens was conducted by DM&E officials in February of 1998. This meeting was a response to contacts with some Brookings residents and their expressions of concern to South Dakota Senators and Representatives in ...Washington.
2. When citizens asked about routing coal train traffic around Brookings, the DM&E consistently answered that "it was not feasible" without any elaboration. When pressed by residents whether any engineering feasibility studies had been made, the eventual answer was that "they had not."
3. The DM&E continued to respond that nothing could be done to change its plan to bring coal traffic through Brookings. The railroad said that the impact on the community would not be serious. It said that property values of trackside homes and nearby homes (almost 500) would rebound. The DM&E claimed that other specified cities had coal train traffic of varying lengths etc. without any problem. The DM&E has repeated these and similar comments many times and in many ways since that first meeting with the community.
4. Following the meeting, the Vice President of DM&E privately indicated that answers to these questions would be obtained for the interested people.



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

ATTN: Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing

Dear Sir or Madam:

In support of the need for an alternative route around the City of Brookings, the Mayor's Committee for a Railroad ByPass in conjunction with Banner Associates, Inc. of Brookings developed a "Railroad ByPass Feasibility Study for Brookings, South Dakota". The study was forwarded to the office of the Governor for inclusion in a State of South Dakota submittal to the Surface Transportation Board.

In addition to the feasibility study, the Mayor's Committee wishes to have the enclosed two (2) items considered when STB acts upon the need to study an alternate route around Brookings. The first item is a documentation of noise problems that coal trains passing through the center of Brookings' residential area would present as done by Edwin J. Luetzow of MTR, Inc. of Brookings, SD. The second is an Historical Perspective of a Brookings, SD Railroad ByPass as prepared by the Mayor's Advisory Committee for the Railroad ByPass. Please accept these supporting documents in reference to the need for a DM&E Railroad ByPass around the City of Brookings.

Sincerely,

For: Gordon Myrdland, Chair
Mayor's ByPass Committee

GM:dms

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5. The next day an understanding between the Vice President of the DM&E and the Mayor of Brookings was reached. According to the agreement, the College of Engineering at South Dakota State University in Brookings would be asked to conduct an engineering feasibility study of possible routes around Brookings. These plans were implemented through contact with SDSU's College of Engineering.
6. Next, the DM&E requested that the Brookings City Commission endorse its rebuild plans as submitted to the STB. Instead, the city government appointed a citizen's Ad Hoc Committee to study the plan and present recommendations to the commission. This committee was headed by the Assistant Vice President of South Dakota State University and included various citizen professionals from the community.
7. The Ad Hoc Advisory Committee was subsequently informed by the DM&E President that the SDSU College of Engineering study would not be satisfactory because of the time frame required to meet the DM&E's needs. At the same time, the Ad Hoc Committee was advised by DM&E officials that the railroad would study re-route plans around Brookings and provide information to the Committee. Indications were that this would be available in a very few weeks.
8. Over the next two months at its weekly public meetings, the Ad Hoc Committee continued to ask DM&E representatives for the results of the re-route studies. The Committee Chair made additional requests for re-route information to the DM&E. Following some so called "mis-communications," a Committee meeting was scheduled for DM&E to present its re-route plan. DM&E representatives were suddenly unable to attend and present a report.
9. Eventually, and at length, the DM&E President made an oral presentation to the Ad Hoc Committee, without specific engineering plans or data. The conclusion of this oral report was the President's statements that "DM&E will not pursue the alternative routing options unless someone finds a more reasonable alternative that we have missed..." and "I feel that is highly unlikely". Also, he stated that "another pre-condition is that there is no better alternative which allows us to effectively meet the public needs with less negative impact." In this case, I am concerned that the least negative impact is to remain where we are and focus our efforts on mitigating issues."

Following many questions by concerned citizens, the fact emerged that communication from DM&E to the Brookings City Engineer had occurred. It was learned that a letter containing the above quotes had been sent to the City Engineer. In this manner the DM&E purposely ignored repeated requests by the Ad Hoc Committee for reasonably collaborative solutions.

The Ad Hoc Advisory Committee was concerned to learn its requests were being totally ignored by DM&E officials. The Committee learned of DM&E's refusal to address its concerns near the conclusion of this meeting. The DM&E referenced letter is to be found as Attachment "C", DM&E Comments on Proposed Rochester, MN by-pass, dated April 9, 1999 - page 21. This document was entered by STB on April 12, 1999 and marked as "Part of Public Record".

10. Either at this meeting or one immediately following, the DM&E President advised the Ad Hoc Advisory Committee that DM&E would work with anyone "that helped to advance the project". At the same time, he indicated that this Advisory Committee could not be described as being of that character. (It is to be noted that the committee had continually expressed strong interest in attempting to find a feasible, practicable by-pass route.) The DM&E President used a broad brush and painted anyone who questioned the plan as an opponent.
11. The Ad Hoc Committee then recommended to the City Commission that an engineering firm be retained to conduct an analysis of alternative by-pass routes and to include the possible depression of DM&E railroad lines through Brookings. The City Commission accepted this recommendation and retained Banner Associates, Inc. of Brookings to perform this task. Their report was completed in the Fall of 1998.
12. The Ad Hoc Advisory Committee subsequently reported to the Brookings City Commission and recommended that the city request a by-pass routing of coal train traffic and negotiations be conducted with DM&E to obtain that result. The City Commission accepted the recommendation for by-passing Brookings and indicated conditional approval of DM&E overall plans with such a by-pass included.

13. At the request of the DM&E President, some members of a Brookings Citizens Committee met with the DM&E President in the later weeks of 1998 and early weeks of 1999 to discuss a DM&E developed proposal. The DM&E sought to develop an agreement or a possible house buy-out plan of some homes in Brookings. These discussions were concerned only with the DM&E housing buy-out plan.

14. Subsequently, in late spring of 1999, DM&E presented the proposed plan to the City Commission. It was based on the planned routing of the coal-train traffic through Brookings and asked for City Commission approval and a joint acceptance of the agreement. The City Commission declined to accept the plan. Support for the total DM&E project was restated with a clear re-emphasis of the condition that a Brookings by-pass be included in the planned re-build of the existing line.

15. Upon learning of STB's acceptance for consideration of a proposed Rochester by-pass plan, both the City of Brookings through its Mayor, and the State of South Dakota through its Governor, requested time for Brookings (and Pierre) to submit specific engineered plans for by-passes (April, 1999).

16. These requests were granted by STB and the result is the RAILROAD BYPASS FEASIBILITY STUDY FOR BROOKINGS, SOUTH DAKOTA, prepared by Banner Associates, Inc. with detailed factors relative to a practical by-pass route of the City of Brookings.

NOTE: This document was prepared by the Mayor's Advisory Committee for the Railroad Bypass.



201 32nd Avenue
P.O. Box 249
Brookings, SD 57006
Telephone: 605/692-8188
FAX: 605/692-8258
E-Mail: mtr@brookings.net



As members of the Brookings Commission on the DME Railroad, Dr. Fred Seymore and I were assigned the task of the documenting the noise problems that coal train passing through the center of Brookings residential area would present.

We selected a section of track on the BNSF line in North Dakota with a .5% grade which is slightly less than half the grade of DM&E through Brookings. We set up our instruments 100 feet from the nearest rail, this duplicated the location of most of the trackside homes in Brookings, with respect to the railroad.

An additional feature of the location was the presence of cut in which the track was located 25 feet below the general topography grade. On the south side of the track a berm of dirt 20 feet high above the general topography grade permitted us to measure the attenuation effect of such a feature.

Engine noise (see train noise graph) At 100 feet from the track, a home is exposed to a 90 DBA noise level. Allowing for an attenuation of 7 DB by the frame construction typical in Brookings, an interior noise level in excess of 83 DBA would result. This noise is very close to the level in factories that an employer must implement a hearing conservation program. (see sec. 1910 OSHA Guide).

Car only noise- the noise of the loaded cars is 65-75 DBA, (the higher levels are due to flat spots on car wheels) will result in noise inside the home that will inhibit any family activities (conversation, TV viewing). It should be noted here that an empty coal car is noisier than that of a loaded car.

Cars on back of berm- note the attenuation produced by the 20 foot high berm is substantial, dropping the noise from 70 DBA to 50 DBA or less it would be an acceptable level.

SUMMARY

Note that the engine noise level and frequency of occurrences we have documented fall within the noise levels observed in the attached Cornell University report and "Chronic Noise Exposure and Physiological Response: A Prospective Study of Children Living Under Environmental Stress". We could expect to see the same physiological stress effect on residents living within 1000 feet of direct exposure to the tracks. There is no difference in train and aircraft noise.

The use of below grade cuts with a massive berm above is a successful method to control the noise propagation. Sound wall type of devices such as used on freeway in cities will not work as the high energy component of the noise are to long of a wavelength.

Edwin J. Zietzow

CHRONIC NOISE EXPOSURE AND PHYSIOLOGICAL RESPONSE: A PROSPECTIVE STUDY OF CHILDREN LIVING UNDER ENVIRONMENTAL STRESS

Gary W. Evans,¹ Monika Bullinger,² and Staffan Hygge³

¹Cornell University; ²Universitätsklinikum Eppendorf, Hamburg, Germany; and ³Kungl Tekniska Högskolan, Gävle, Sweden

Abstract—Chronic exposure to aircraft noise elevated psychophysiological stress (resting blood pressure and overnight epinephrine and norepinephrine) and depressed quality-of-life indicators over a 2-year period among 9- to 11-year-old children. Data collected before and after the inauguration of a major new international airport in noise-impacted and comparison communities show that noise significantly elevates stress among children at ambient levels far below those necessary to produce hearing damage.

People typically characterize environmental issues as physical health or technological problems. But the physical environment may also have adverse psychological impacts. Suboptimal environmental conditions, such as noise and crowding (Cohen, Evans, Sokol, & Krausz, 1986; Evans & Cohen, 1987; air pollution (Evans, 1994), or disaster (Baum & Fleming, 1993), may elicit psychological coping reactions, including cardiovascular and psychoneuroendocrine activation (Baum, Grunberg, & Singer, 1982; Frankenhaeuser, 1986; Lundberg, 1984). In the present article, we provide prospective, longitudinal evidence that chronic noise elevates psychophysiological stress and depresses perceived quality of life.

Although noise can cause hearing deficits (Kryter, 1994), nonauditory, stress effects of noise have not been demonstrated definitively because of methodological and conceptual limitations in prior research. Laboratory studies indicate that acute noise elevates psychophysiological stress (e.g., blood pressure, epinephrine), but these responses habituate rapidly (Evans, in press; Glass & Singer, 1972; Hygge, 1997).

Psychophysiological stress responses to chronic noise have been investigated in industrial settings and in communities proximate to highways and airports. These cross-sectional studies, unfortunately, are subject to an array of plausible alternative explanations, particularly self-selection bias. Although suggestive trends linking occupational noise exposure and hypertension exist, the designs of these studies are so weak that definitive conclusions cannot be drawn (Evans, in press; Thompson, 1993). Poor or nonexistent control groups, nonspecific assessments of blood pressure (e.g., one reading while on the job), and insufficient estimation of noise exposure plague industrial studies of noise and cardiovascular parameters.

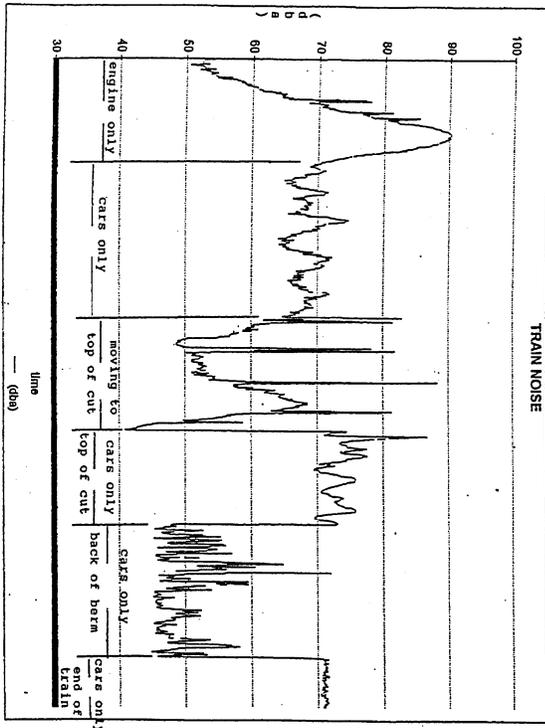
Community studies of aircraft noise reveal elevated psychophysiological stress among children (Evans, Hygge, & Bullinger, 1995; Evans & Løpore, 1993). All of these studies are cross-sectional and, with one exception (Evans et al., 1995), limited to blood pressure. Kalipachid (1977) has also shown a dose-response function between noise exposure in the community and hypertension among adults around the Amsterdam airport. The most clear-cut evidence that noise causes ele-

Address correspondence to Gary Evans, Department of Design and Environmental Analysis, Cornell University, Ithaca, NY 14853-4401; e-mail: gwe1@cornell.edu.

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PSYCHOLOGICAL SCIENCE

Noise Exposure and Physiological Response

Procedure

Testing occurred in a sound-attenuated, climate-controlled mobile laboratory parked outside the child's elementary school. A microphone (5 m above ground) interfaced with a B&K Model 4426 Community Noise Level Analyzer monitored 24-hr outdoor noise levels at the trailer. Data were collected 6 months prior to the opening of the new airport (Wave 1), 6 months after the opening (Wave 2), and again 18 months after the opening (Wave 3), for a total of three assessment phases per participant.

Resting blood pressure was assessed with an automated monitor (A & D Digital, UA 751) while the child sat comfortably with his or her right arm supported at heart height on a table. Baseline readings were estimated by taking the average of six resting indices taken on 2 consecutive days. On each day, four readings were taken after an orientation to the automated monitor, and the first reading was discarded. Reliability estimates for the six readings exceeded an alpha of .85 for both diastolic and systolic blood pressure.

Twelve-hour overnight urine samples were collected between 20:00 on the evening of the initial testing day and 8:00 the following morning. The container was kept refrigerated and contained a preservative. Parents returned the urine specimens container the next day to the trailer. Total volume was measured, and small replicate samples of urine were extracted and deep frozen at -70°C until assayed. Half of the replicates were also pH adjusted to reduce oxidation further for the catecholamine assays. Epinephrine and norepinephrine were assayed by high-performance liquid chromatography with electrochemical detection (Rigbi & Kissinger, 1977). Cortisol was determined by a radioimmunoassay (Bartter Traversal Diagnostics, Cambridge, Mass.). (For further information about procedures for the collection and assay of urinary neuroendocrine samples, see Baum & Grunberg, 1995, and Grunberg & Singer, 1990.)

Quality of life was assessed by the KINDL, a valid and reliable index of the principal domains of quality of life (physical, psychological, social, functional daily life; Bullinger, von Mackensen, & Kirchberger, 1994). These domains were combined for the present analysis ($\alpha = .92$).

RESULTS

The data analytic strategy was to conduct a 2 x 3 repeated measures multivariate analysis of variance (MANOVA). The principal test of interest is the exact *F* test for the interaction of group (noise impacted vs. quiet) and time (Wave 1 vs. Wave 2 vs. Wave 3).

As can be seen in Table 1, blood pressure increased in the noise-impacted communities after Wave 1, with the opening of the new airport; much smaller changes occurred among the quiet, comparison communities. The interaction of group and time was significant for systolic blood pressure, MANOVA exact *F*(2, 214) = 4.30, *p* < .01, and marginal for diastolic blood pressure, *F*(2, 214) = 2.83, *p* < .05.

The overnight urinary neuroendocrine results are shown in Table 1 as well. Consistent with the elevations in blood pressure, both epinephrine, *F*(2, 200) = 36.86, *p* < .001, and norepinephrine, *F*(2, 200) = 22.31, *p* < .001, increased sharply among children living in the eight pairs of the new airport after it opened; smaller increases were seen over the same period among the children residing in quiet communities. Changes in urinary cortisol over time were not systematically related to noise conditions, *F*(2, 200) = 1.73, *n.s.* Degrees of freedom vary because of missing data.

As indicated in Table 2, quality of life declined significantly in the noise-impacted communities 18 months after the opening of the new airport, but remained relatively stable in the quiet, comparison communities, *F*(2, 202) = 3.07, *p* < .05.

Table 1. Measures of psychophysiological stress in the noise-impacted and quiet communities

Measure and community	Wave		
	1	2	3
Systolic blood pressure (mm Hg)			
Noise	97.2 (11.6)	101.6 (9.9)	102.4 (10)
Quiet	100.8 (8.9)	102.2 (8.9)	102.6 (8.2)
Diastolic blood pressure (mm Hg)			
Noise	60.5 (7)	63.2 (6.1)	64.4 (6.2)
Quiet	62.6 (7.1)	63.6 (6.4)	64.8 (6.3)
Epinephrine (ng/h)			
Noise	229.2 (153.4)	328.1 (130.4)	341.9 (168.1)
Quiet	251.8 (57)	280.9 (64.6)	246.2 (83.7)
Norepinephrine (ng/h)			
Noise	610.7 (338.6)	1,238.5 (659.7)	1,556.3 (703.6)
Quiet	660.0 (506.9)	879.7 (457.7)	950.7 (325.3)
Cortisol (µg/h)			
Noise	355.9 (189.3)	435.9 (538.9)	514.4 (689.3)
Quiet	330.5 (189.3)	237.3 (614.7)	377.7 (288.9)

Note. The data shows are means, with standard deviations in parentheses.

PSYCHOLOGICAL SCIENCE

Gary W. Evans, Monika Bullinger, and Staffan Hygge

Table 2. Quality of life in the noise-impacted and quiet communities

Community	Wave		
	1	2	3
Noise	110.3 (13.8)	112.4 (13.9)	104.8 (16.0)
Quiet	112.5 (16.4)	112.1 (17.0)	109.6 (15.3)

Note. The scale for the quality-of-life measure ranges from 40 to 220, with greater values indicating higher perceived quality of life. The data shows are means, with standard deviations in parentheses.

DISCUSSION

Chronic exposure to ambient aircraft noise elevates psychophysiological stress in human beings. Children living proximate to the new Munich International Airport experienced significant elevations in resting blood pressure after the airport opened. During this same time period, well-matched children in nearby, similar communities experienced stable levels of resting blood pressure. The catecholamine data, which are consistent with the blood pressure effects, underscore the value of conceptualizing noise and other suboptimal environmental conditions as stressors. Elevated urinary catecholamines have consistently been shown to reliably and sensitively mark chronic exposure to stressors (Baum et al., 1982; Frankenhaeuser, 1986; Lundberg, 1984). Urinary cortisol has proven less reliable as an index of chronic stress exposure (Frankenhaeuser, 1986; Lundberg, 1984).

The self-report data show the same pattern, but with a delayed time course. Children's perceived quality of life dropped more markedly in the noise-impacted communities than in the quiet communities, but this drop did not occur until 18 months after the new airport opened.

In any field study, some questions remain. We cannot disentangle the apparent effects of chronic noise from the unavailability of that exposure. Although the primary environmental change near the new airport was dramatic increases in sound levels, the surrounding community also witnessed increased land development, more road traffic, and the like. Our prospective data add evidence to previous cross-sectional results that have shown elevated stress among adults and children working and residing, respectively, in chemically noisy environments. In young children, chronic noise exposure appears to cause increased psychological stress, as measured by cardiovascular, neuroendocrine, and affective indicators. These effects occur among children who suffer no detectable hearing damage while living in the immediate vicinity of an airport.

Acknowledgments—We are grateful to the families who cooperated with this research. We thank Sylvia von Mackensen, Martinus Meis, Gerhard Heide, Gunnar Sköglberg, Chantale Wigen, and Hans-Joachim Paal-O'Keefe for their dedication to this project. This research was partially supported by the Society for the Psychological Study of Social Issues, the National Institute of Health (R01 HL 47210), the Nordic Scientific Group for Noise Effects, the Swedish Environmental Protection Agency, and the German Research Foundation. The second author was also supported by the DFG Heisenberg Fellowship.

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(RECEIVED 3/15/97; ACCEPTED 5/6/97)

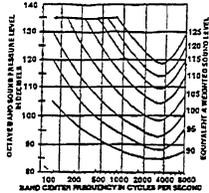


FIGURE G-9

Equivalent sound level contours. Octave band sound pressure levels may be converted to the equivalent A-weighted sound level by plotting them on the graph and noting the A-weighted sound level corresponding to the point of highest penetration from the sound level contours. This equivalent A-weighted sound level, which may differ from the actual A-weighted sound level of the noise, is used to determine exposure limits from Table G-16.

(b)(1) When employees are subjected to sound exceeding those listed in Table G-16, feasible administrative or engineering controls shall be utilized. If such controls fail to reduce sound levels within the levels of Table G-16, personal protective equipment shall be provided and used to reduce sound levels within the levels of the table.

(2) If the variations in noise level involve maxima at intervals of 1 second or less, it is to be considered continuous.

TABLE G-16—PERMISSIBLE NOISE EXPOSURES¹

Duration per day, hours	Sound level dBA slow response
8	90
6	92
4	95
3	97
2	100
1-1/2	102
1	105
1/2	110
1/2 or less	115

¹When the daily noise exposure is composed of two or more periods of noise exposure of different levels, their combined effect should be considered, rather than the individual effect of each. If the sum of the following fractions $C_1/T_1 + C_2/T_2$ exceeds unity, then the total exposure should be considered to exceed the limit value. C_1 indicates the total time of exposure at a specified noise level, and T_1 indicates the total time of exposure permitted at that level. Exposure to impulsive or impact noise should not exceed 140 dB peak sound pressure level.

(c) **Hearing conservation program.** (1) The employer shall administer a continuing, effective hearing conservation program, as described in paragraphs (c) through (e) of this section, whenever employee noise exposures equal or exceed an 8-hour time-weighted average sound level (TWAA) of 85 decibels measured on the A scale (slow response) or, equivalently, a dose of fifty percent. For purposes of the hearing conservation program, employee noise exposures shall be computed in accordance with Appendix A and Table G-16a, and without regard to any attenuation provided by the use of personal protective equipment.

(2) For purposes of paragraphs (c) through (h) of this section, an 8-hour time-weighted average of 85 decibels of a dose of fifty percent shall also be referred to as the action level.

(d) **Monitoring.** (1) When information indicates that any employee's exposure may equal or exceed an 8-hour time-weighted average of 85 decibels, the employer shall develop and implement a monitoring program.

(2) The sampling strategy shall be designed to identify employees for inclusion in the hearing conservation program and to enable the proper selection of hearing protectors.

(3) Where circumstances such as high worker mobility, significant variations in sound level, or a significant component of impulse noise make area monitoring generally inappropriate, the employer shall use representative personal sampling to comply with the monitoring requirements of this paragraph unless the employer can show that area sampling produces equivalent results.

(4) All continuous, intermittent and impulsive sound levels from 80 decibels to 130 decibels shall be integrated into the noise measurements.

(5) Instruments used to measure employee noise exposure shall be calibrated to ensure measurement accuracy.

(6) Monitoring shall be repeated whenever a change in production, process, equipment or controls increases noise exposures to the extent that:

(i) Additional employees may be exposed at or above the action level; or

(ii) The attenuation provided by hearing protectors being used by employees may be rendered inadequate to meet the requirements of paragraph (f) of this section.

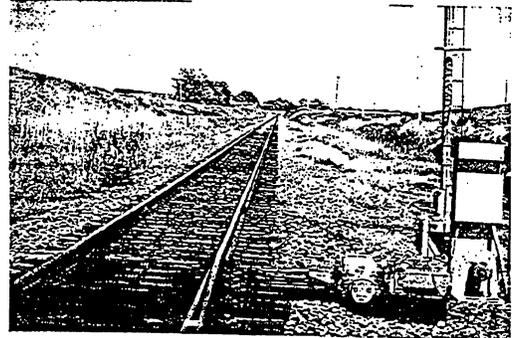
(7) **Employee notification.** The employer shall notify each employee exposed at or above an 8-hour time-weighted average of 85 decibels of the results of the monitoring.

(8) **Observation of monitoring.** The employer shall provide affected employees or their representatives with an opportunity to observe any noise measurements conducted pursuant to this section.

(9) **Audiometric testing program.** (i) The employer shall establish and maintain an audiometric testing pro-



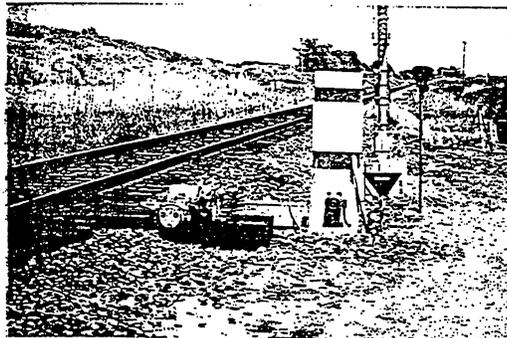
The above photograph shows the grade of 0.5% on the electronic level. Measurements were taken over a 3000 ft length of track.



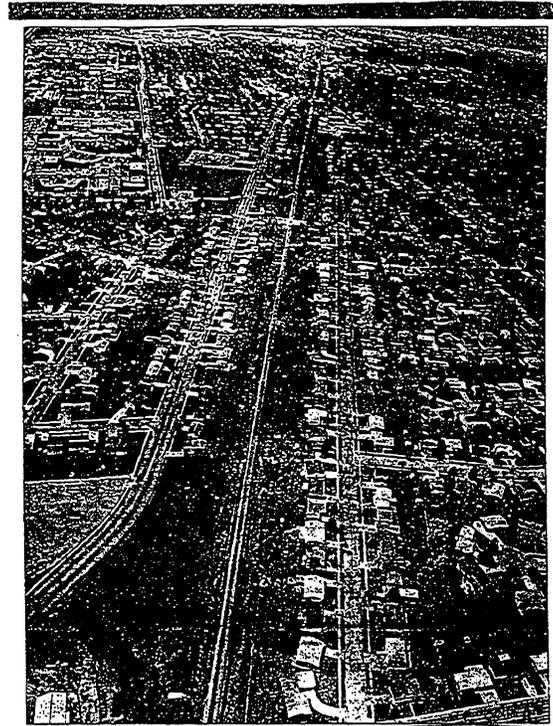
This photograph shows a view of the cut where the track was depressed below the general topography.



The above photograph shows the position of video and sound equipment 100 ft from the nearest rail.



This photograph shows the propane heated switch.



Register photo by Eric Landwehr. Looking west, the DM&E tracks split the city of Brookings. Orchard Drive runs along the left side of the rails and Derald Drive stretches along the right.

Sioux Valley School District No. 5-5
 BOX 278
 200 HANSINA AVENUE
 VOLGA, SOUTH DAKOTA 57071-0278
 Phone (605) 627-5657 • Fax (605) 627-5291



June 14, 1999

Attention: Elaine K Kaiser
 Chief, Section of Environmental Analysis
 Environmental Filing
 Office of the Secretary, Case Control Unit
 STB Finance Docket No. 33407
 Surface Transportation Board
 1925 K St NW
 Washington DC 20423-0001

The City of Brookings has proposed a DM&E coal train bypass plan, which will significantly impact the Sioux Valley School District. The School Board of Sioux Valley Schools would like to respond to this plan by providing the following information regarding student busing and safety.

Sioux Valley Schools presently has 348 eligible K-12 grade bus riders on six regular daily routes. Three of these routes travel north of Volga where 199 of these 348 students live. These three routes currently cross the railroad 14 times every school day. Of these 14 crossings, 12 are in Volga with warning lights at the intersections. If this bypass becomes a reality, the number of railroad crossings for our bus students will be 26 times per day at a minimum, raising tremendous safety issues.

Also of concern is the impact the bypass plan will have on a large number of our high school students who drive themselves to school and school-related activities both during the pre-dawn hours for morning practices and the late night hours returning home from various matches, games, or events. The railroad crossings in Volga are well-lit and have warning lights; however, that may not be the case on the planned county road crossings. There are three county highways crossing the proposed bypass that may not have warning lights and certainly will not be as well-lit as the present railroad right-of-way through Volga. Combining the lack of railroad crossing lights or gates with the increased speed allowed on the county roads as compared to the city crossing speeds, the safety of our student drivers becomes a significant risk factor.

It is our belief that the current railroad right-of-way is presently satisfactory and safe for both our bus student and student drivers. However, we also strongly believe that the proposed railroad bypass right-of-way does not consider the increased safety risks for Sioux Valley students and is neither necessary nor reasonable.

Respectfully,
 Sioux Valley Board of Education

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BROOKINGS TOWNSHIP
 Board of Supervisors
 Donald L. Peterson, Clerk



DATE: 1 July 1999

TO: Office of the Secretary, Case Control Unit
 STB Finance Docket NO. 33407
 Surface Transportation Board
 1925 K Street NW, Suite 500
 Washington, DC 20423-0001

Attn: Elaine K. Kaiser, Chief, Section EA

FROM: Brookings Township Board of Supervisors
 Donald L. Peterson, Clerk
 1228 42nd Street
 Brookings, SD 57006

RE: DM&E Powder River Basin Construction Project
 DM&E Upgrade and Route Through the City of Brookings

The Brookings Township Board of Supervisors is in favor of the proposed upgrade of the Dakota, Minnesota and Eastern Railroad (DM&E) as proposed by the Railroad. The farmers in Brookings Township, as well as Brookings County and the rest of the state, need a viable railroad to provide transportation for their commodities. A failure of the DM&E would raise shipping costs for all elevators (and consequently farmers) who use the DM&E. It would also raise shipping costs to elevators and farmers which use other railroads because those facilities would become overloaded, especially when there is a shortage of transportation facilities. An abandonment would raise expected shipping costs by at least \$1.0 per bushel for corn, soybeans, and wheat. A difference of 20 cents per bushel seems more realistic because the Burlington Northern Santa Fe (BNSF) would likely raise its tariffs with reduced competition. Also, grain handling facilities along the BNSF would become overloaded, and would cut their bid prices.

A preliminary study, underway at South Dakota State University, shows that elevators without railroad facilities, on average, pay 4 to 17 cents less per bushel for corn to farmers than do elevators with rail facilities. (See Attachment A) So far in 1999, it's been a nickel to a quarter less. It costs the Farmers Cooperative Elevator in Brookings 20 cents to 25 cents more to ship a bushel of corn from Brookings, SD to Winona, MN by truck than it does by rail. It costs a dime more per bushel to ship soybeans by truck from Brookings to Mankato, MN than it does by rail. Brookings County, alone, raises about 10 million bushels of corn and 3 to 4 million bushels of soybeans annually. A 20 cent increase in shipping costs for corn due to a loss of the railroad would reduce county income by \$2 million dollars, not to mention the cost to soybean and wheat producers.

The upgrade would be the reduced time it would take to move a rail car

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from Brookings to Winona. Estimates indicate that travel time would be reduced from 24-36 hours to 6-8 hours. Movement from the west end of South Dakota would be cut from 3-5 days to 1-1.5 days. This would be of great benefit when there is a harvest time shortage of hopper cars and there is pressure to get the grain moved. The reduced costs from greater operating efficiency would likely be passed on to local shippers as the DM&E competes for a greater share of the market.

The Township Board opposes any rerouting of the railroad around the City of Brookings. First, is the safety factor. With the reroute proposed by the City of Brookings, the number of township road - railroad crossings in Brookings Township would increase from 4 to 9 and the number of county road crossings would increase by 1 (See attached map). The Township Board believes it would safer to have all trains on one set of rails than to have two sets less than a mile apart.

The second reason is the cost to the Township to maintain or rebuild roads approaching any new rails so there is adequate visibility for safety. Also, some of the township roads will be crossed in low lands which are subject to dense fog in the spring and fall. This will greatly increase the danger of crossing the tracks, especially for school buses and farm equipment.

Third, is the cost of a bypass. The cost of a bypass will have to be born by someone, either the taxpayers in Brookings, if paid for by the City of Brookings, or the shippers, if paid for by the railroad.

Fourth, the bypass, as proposed by the city of Brookings, would cross several miles of wetlands, which serve as flood plains for North Deer Creek and Six Mile Creek. A railroad grade would create a great dike, keeping the flood waters to the north of the tracks. This would put not only more farmland under water at time of flooding, but also township roads and some farmsteads and rural houses.

We ask the Surface Transportation Board to grant permission to the DM&E to upgrade it facilities and recommend that no bypass be built around the City of Brookings.

Sincerely,

Lyle Johnson
 Lyle Johnson, Supervisor

Dale Ishol
 Dale Ishol, Supervisor

Dan Miller
 Dan Miller, Supervisor

Donald L. Peterson
 Donald L. Peterson, Clerk

Leon Bush
 Leon Bush, Treasurer

ATTACHMENT A

The five graphs below show the differences in the price of corn paid to farmers by elevators that have rail service as opposed to those which do not. These 10 locations were chosen because basis data were readily available. (Basis is the difference between the Chicago Board of Trade closing price and the local price paid at the close of the trading day. Because the local cash price is less than the CBT price, the basis is negative.)

I have been keeping track of the CBT price and about 35 local prices for several years. Of the 35 locations, 5 are without rail service. I compared the prices of the elevators that have no rail service with those of the nearest elevator with rail service for which I have data.

As can be seen from each of the graphs, elevators with rail service consistently pay higher prices than do elevators without rail. Some pairs exhibit greater differences than do others due to elevator size and unit train capacities. Clark (no rail) has been paying about 11.5 cents less than has Vienna (rail), so far this year. The difference between Greyville (no rail) and Elk Point (with rail) is about 23.7 cents. The difference between Oldham (no rail) and Brookings (with rail) is about 5.8 cents. Viborg (no rail) is running about 4.8 cents under Bereford (with rail) and Yankton (no rail) is about 6.7 cents under Vermillion. Breaks in the graphs indicate missing data.

Of the 5 pairs of locations, the average differences range from 4.8 cents to 23.7 cents per bushel higher for elevators with rail facilities. The average advantage for the 5 elevators with rail service is 10.5 cents per bushel so far in 1999. Earlier years show the same pattern. The 5 locations with rail service averaged 6.93 cents more in 1998, 9.30 cents more in 1997 and 6.76 cents more in 1995. Likewise, elevators with rail service pay more for soybeans than do elevators without rail service. So far this year, the average is 6.6 cents higher for elevators with rail service, with a range from 1.25 cents higher to 12.0 cents higher.

Donald L. Peterson
 Extension Economist
 South Dakota State University

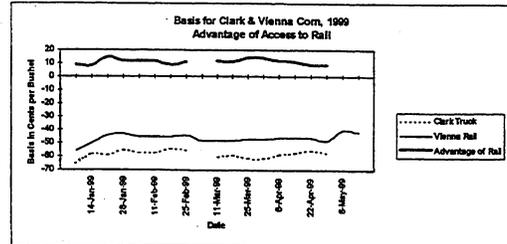


Figure 1

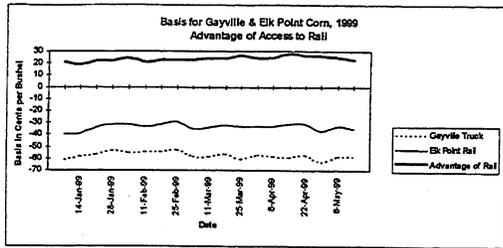


Figure 2

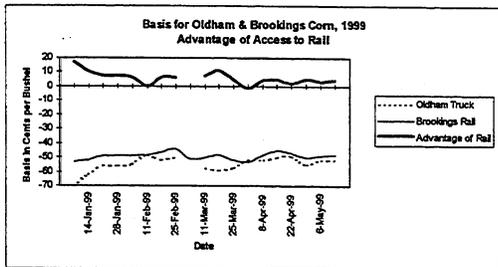


Figure 3

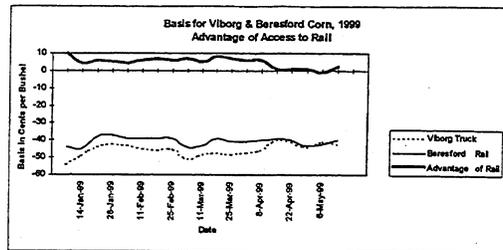


Figure 4

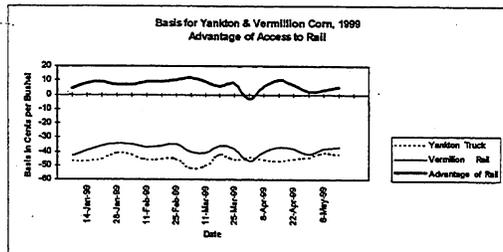
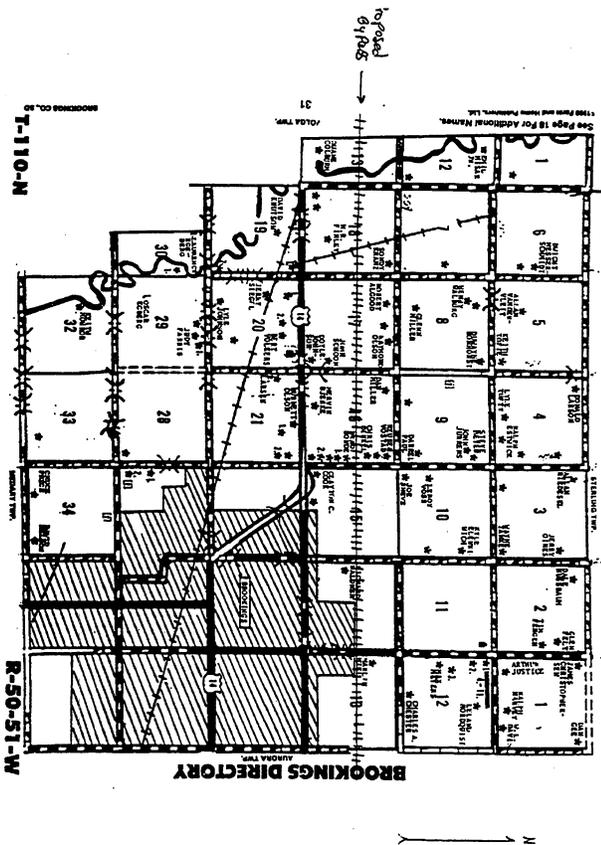


Figure 5



July 5, 1999

Attn: Elaine K. Kaiser
 Chief, Section of Environmental Analysis
 Environmental Filing
 Office of the Secretary
 Case Control Unit
 STB Finance Docket No. 33407
 Surface Transportation Board
 1925 K Street, NW
 Washington, D.C. 204423-0001



Attn: Elaine K. Kaiser:

I am writing to you concerning the proposed Brookings Bypass.

DM&E railroad presently has a line that passes through Brookings. Those who want it rerouted pass Brookings, really want the railroad route through Brookings eliminated. There are several industries in Brookings dependent upon the railroad to transport the raw material for manufacturing, as well as transport the finished product. When 3M, Rainbow Play Systems, Coast to Coast, Grain Elevators built their businesses, they did so because the rail line was there. The present rail line has been in place for over a 100 years. If the bypass is put in, the rail line going through Brookings would eventually be abandoned. What happens to these businesses? 3M, alone, employs about 700 people with a 24 million dollar yearly payroll. Without the railroad, 3M may consider closing or at the very least cancel any plans for expanding their plant.

The railroad has been in place for 100 years. When people built their homes along the railroad 30 years ago, they knew the line was in their backyards. Now they want the railroad move through farms and rural housing developments. The livelihood of some farmers will be destroyed or severely diminished. Some homes will have to be moved or demolished, and others will have property values diminished.

If Brookings is allowed to have a bypass, it will set a precedence for other communities. Other communities may want the railroad to go around them, also. What will be the justification to allow Brookings a bypass and say no to the communities? Or will you allow every community who asks to have a bypass?

I am not opposed to DM&E improving their rail line. I think that can be accomplished by leaving it in the present location.

Sincerely:

Bernadette De Greef
 Bernadette DeGreef
 102 58th Ave. S
 Brookings, So. Dak. 57006

ENVIRONMENTAL
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July 5, 1999

Office of the Secretary
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001



Dear Ms. Kaiser,

My name is Jeff Anderson and I am the current Mayor of the City of Bruce S.D. I am writing to you regarding the proposed railroad by-pass around Brookings, S. D. In recent weeks I have been contacted by many people in and around the community of Bruce, which is located due north of Highway 14, on County Road 7. We are approximately 7 miles from Highway 14. We officially would like to register our opposition to the proposed by-pass plan. The reasons for our opposition are significant and alarming.

Our first major concern is for the safety of our citizens and the community. All of the children from the community of Bruce and the surrounding area are bused into Volga, as part of the Sioux Valley School District. Not only will the children that ride the bus be affected, but older students that transport themselves, before and after school and to and from extracurricular activities will be placed at significant risk. In addition, most of the people in our community and surrounding area commute to work, shopping facilities, appointments and services, and recreational pursuits in Brookings and the Volga area. The vast majority of our community are commuters that will be directly affected by this proposal. Obviously we feel that this is a negative approach to the DM&E issue. It was handled inappropriately and in secret, eliminating input from those who would be affected and it is a proposal that puts our community in harms way, literally. Given the vast number of township, county and state roads that this proposal will impact, our driving community will be endangered every time they have to cross these tracks. We are not confident that appropriate signals, crossing barriers and other precautions will be implemented.

Also, I need to tell you about our community of Bruce. We are located within the valley directly adjacent to the Big Sioux River. Because the community is in a low-lying area, we are constantly dealing with issues of flooding and drainage. I am not aware of any environmental study that has examined the possible implications if this by-pass is created. You must understand that if the flow of the river or the subsequent drainage and run-off fields are in any way altered, the result could be the total flooding of our community. The potential is real and the outcome would be devastating, destroying

ENVIRONMENTAL DOCUMENT

our homes, businesses, farming operations and economy. The fact that agricultural land that has never been used for anything but farming is being jeopardized is ridiculous. Our economy cannot sustain that type of reclamation and doesn't make sense when a feasible, established track is in place. Livelihoods are being threatened needlessly. Not until such a study has examined this specific environmental problem, can you even begin to contemplate the by-pass as an option. In my opinion you simply do not have all the information and data that you need to make an appropriate decision regarding this issue.

Obviously there are other critical environmental issues that are of concern. Pollution of ground water, the air and noise are important. However, I can guarantee that if the proposed by-pass is in place, the ultimate cost will be in human lives. You simply cannot put hundreds upon hundreds of vehicles across tracks conveying the weight and the speed of the coal trains without tragedy. All of us have the vivid pictures in our minds of cross bars that failed, driver error, weather and inclement conditions that have resulted in a school bus mangled and children injured and dead. This occurs even in the best of circumstances. The proposed by-pass is one of the poorest circumstances and it is incredulous that it is even being considered. This is a decision that will be tested everyday, every time a school bus or car must cross. It is a risk that is real and it would appear that very little thought or concern has gone into this proposal.

While the concerns of the Brookings community is understandable, the by-pass is nothing more than an attempt to get rid of their problem at anybody else's expense. Clearly you can see that safety is our first and highest priority.

However, the potential impact on the very existence of our community is significant given the flood plain and the past history of our community. I invite you to check with FEMA, Army Corps of Engineers, the Red Cross, and our State Transportation Board and you will find that the City of Bruce and the surrounding area is very susceptible to changes in the movement and flow of the Big Sioux River. This material is extensive and it is well-documented. To ignore this data would be inappropriate negligent.

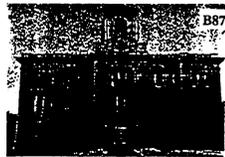
I would welcome the opportunity to discuss these issues and any others with you. Please listen to our concerns and be thoughtful in your consideration of this issue.

Sincerely,

Jeff Anderson
Mayor of Bruce

Brookings County Commissioners

314 Sixth Avenue
Brookings, South Dakota 57006-2086
Telephone: 605/692-6284
Fax: 605/692-7397



B87

July 6, 1999

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



Attn: Elaine K. Kaiser, Chief, Section of EA
Environmental Filing

Brookings County, South Dakota is in the east central portion of the state, shares the eastern border with the State of Minnesota, covers an area of 816 sq. miles, and sustains a population of 26,394 (1996 estimate).

The DM&E Railroad crosses the county from east to west. For over a century, rail transport has been an important conduit for freight coming to the area and products, especially agricultural, going to market. The location of the rail line was an important part of the development of this county, as well as the communities of Elkton, Aurora, Brookings and Volga, all of which developed along the rail line. *The Brookings County Commission wishes to go on record as underlining the need for rail transportation to continue as a viable part of our transportation system.*

The proposed expansion and upgrade of the DM&E Railroad as projected by DM&E is expected to have a very positive economic impact in this area as well as across the state both during the construction phase and upon completion. The existing rail in this county is in very poor condition allowing only partially loaded cars to be shipped. The new rail will allow fully loaded cars, thereby potentially increasing the amount of agricultural product(s) that may be shipped at harvest time and throughout the year. The DM&E headquarters office is currently located in Brookings, South Dakota, and an increased number of jobs are anticipated for the Brookings area.

The comments we are forwarding to the Surface Transportation Board (STB) are in regard to the Brookings bypass route proposal. These comments are made under the following assumptions:

- 1. The existing rail line in the city of Brookings will be maintained and improved for continued service to existing users along that section.
- 2. Improved crossings and right of way safety concerns will be adequately addressed for the line to be maintained on that corridor.

ENVIRONMENTAL DOCUMENT

Our comments will be addressing the following areas of concern: Railroad Crossings, Environmental Concerns, Drainage, Agricultural Issues, and Utility Issues.

RAILROAD CROSSINGS

As stated in our July 7, 1998 correspondence to the STB, the upgrade of the rural crossings is a major safety concern of this Commission. The bypass proposal creates 17 additional crossings consisting of an at-grade crossing on State Highway 14, a grade separation crossing (building an overpass for the four-lane Interstate 29), five at-grade crossings on asphalt county roads and ten at-grade crossings on gravel rural township roads. The current Brookings bypass proposal submitted in June 1999 includes an estimated costs for the 6 grade crossings on the hard surfaced roads to include signal lights with arms, and costs for only crossbucks with signage at the 10 at-grade rural gravel crossings (the 17th crossing spans across I-29).

This Commission is concerned that the proposed safety features will not be adequate. Speed limits on state highways in South Dakota are 65 mph and 55 mph on county and township roads. People commuting to Brookings, Volga, and other communities for school and work use these roads. The proposed bypass creates extra crossings daily for the Sioux Valley (Volga) school buses and the Brookings school buses. For these schools, it is estimated the number of crossings may increase from 32 to 71. Even though school buses stop at railroad crossings, buses may not have adequate clear visibility due to weather or the angle of the crossing. Other rural traffic, including many young inexperienced drivers and their passengers, will encounter trains at these poorly protected crossings. Students are allowed restricted driving permits at age 14. The escalated rural speeds greatly increase the possibility of mishaps, especially at the gravel crossings. Add to the speed issue, poor visibility due to crops, the angle of the intersection, the variety of weather (fog, rain, snow, etc) encountered, and the concern mounts. The roads crossed by the bypass are close to the city of Brookings and carry more traffic than would similar roads farther away. Some of the roads are crossed where the bypass is at a "diagonal-causing" intersection, which would need alteration to make a driver's line of sight adequate. If some of these problems cannot be resolved, roads may have to be closed creating a whole new set of problems for rural residents including, but not limited to, longer bus routes, difficulty accessing fields, and increased time and transportation costs.

The main difference between the crossings on the existing corridor and the crossings on the proposed bypass is the speed and low level of warning provided. There are 5 major at-grade crossings within the city of Brookings where one crossing currently permits cars to travel 35 mph, with the others at 25 mph. All of these crossings are protected with flashing signal lights. In the bypass proposal, cars proceeding at 55 mph encounter crossings with only signage and crossbucks which may not be visible soon enough, especially not in poor weather. It is this Commission's opinion that ALL gravel crossings, whether on the existing corridor or the bypass, need, at a minimum, a flashing warning of a potential hazard ahead. *These need to be provided by the railroad and any cost(s) added to all proposals.* It is our opinion that the greatest potential for accidents will occur first on township gravel crossings, second on county road crossings and third on state road crossings. (See Attachment A)

ENVIRONMENTAL CONCERNS

The impact of expected noise and vibration in the bypass proposal states, "Because of the rural location and sparse population along the bypass route, noise is assumed not to be a major environmental issue." It is expected that the major noise to be encountered will be the whistle and engine noise. While it is true there are fewer residences near the track on the bypass, the open nature of the rural landscape allows noise to travel greater distances. So whatever level noise is a problem, rural residents will be impacted.

DRAINAGE

The proposed bypass for the cities of Brookings and Volga crosses the valley of the Big Sioux River and two major tributaries: Six-Mile Creek and Deer Creek. Any openings such as bridges, ditches, or culverts act as funnels and cause water to flow toward them if the grade allows or the water flow creates ponds in flat areas. Any of these effects changes the land and how it can be used. If the bypass is added to the DEIS, it is imperative that extra attention be given to this dilemma. Openings in the railroad grade need to be adequate to handle changes in water flow and attention needs to be given to the size of existing structures, bridges, etc., "down stream" from newly created ones to minimize impact. Additional manmade barriers cause lasting environmental impacts and should be given fair consideration when judging the reasonableness of any proposal.

Included in the surface water drainage problem is a solemn concern for the groundwater supply. The Big Sioux Aquifer is a very shallow surficial aquifer that provides water to much of eastern South Dakota including the cities of Brookings, Flandreau, Dell Rapids, Sioux Falls, Baltic and others. Two rural water systems, Kingbrook and Brookings-Deuel Water, draw water from the aquifer to provide excellent potable water to the rural populace and also to people residing in towns including Bruce, Elkton, Bustnell, and White. The cities of Brookings, Aurora, and Volga, as well as many individual rural homes also draw water directly from this aquifer. The aquifer is thinly covered by permeable soil with a depth of a few feet to areas where the water is nearly at ground level. Because of this fragile cover and clear danger of contamination, Brookings County has been very active in restricting land use activities in order to preserve the quality of this most important natural resource, both now and for the future. When considering both the existing corridor and the bypass route, the proposed bypass route more than doubles the area of the aquifer impacted. Therefore, it is of paramount importance that special attention be granted to this concern in the DEIS. The Brookings east well field that serves the cities of Brookings and Aurora is near the existing rail corridor and the proposed bypass route adjoins the Brookings north well field, adding a certain level of jeopardy to the entire public well heads for the city and surrounding residents. (See Attachment B)

AGRICULTURAL ISSUES

Agriculture is the largest industry in South Dakota and has historically been the backbone of the state's economy. Page 8 of the bypass proposal states "The railroad will eliminate 225 acres of crop land and 145 acres of hay and pasture land spread over 32 parcels of land. The railroad right of way will also divide 19 of the 32 parcels causing inconvenience to these landowners. In three cases the right of way will create an isolated segment of property with no access." Although we have no reason to question these numbers, there is more to the story. At least 9 sections of land along the bypass would be crossed with a diagonal or curved right of way, which will impact these areas in an entirely different way than the approximately 8 sections where the right of way will follow the half section line. These land owners along the straight portion of the bypass will certainly be distressed, both by the grade, loss of their land, changes in drainage patterns with possible flooding, and other unknown impacts as well. Those who will experience the curved or diagonal sections will have many more impacts. The diagonal section on the east-end of the bypass crosses several quarter sections of irrigated farmland. The type of irrigation system for this farmland is a circular center pivot system that cannot be used in a quarter of land intersected by a railroad grade. Thus the operators of this particular land not only forfeit land, they now have triangular shaped fields which are more difficult to operate, plus the producer has lost the capability of using the irrigation system that was a large investment. The potential productivity of this type of ag land is greatly reduced without the irrigation capability, so future income from the remaining acres is less. Because this land is over the Big Sioux Aquifer, use of the land for something other than restricted agriculture is highly unlikely. The land affected by the west-end of the curved portion of the proposed bypass is highly productive land and small uneconomical fields may result from the bypass. Although the

Attachment A

BROOKINGS COUNTY HIGHWAY DEPARTMENT
422 WESTERN AVENUE
BROOKINGS, SOUTH DAKOTA 57006-1815
PHONE 605-696-8270
FAX 605-696-8278
July 1, 1999

Jeffery Bross
South Dakota Department of Transportation
700 Broadway Avenue East
Pierre, South Dakota 57501-2586

Dear Jeff,

This is information requested by the Brookings County Commissioners for input on a decision that has to be made by them on the Railroad Bypass around Brookings.

All township roads are gravel surface. (School traffic NOT included.)

Aurora Township:

- #1A - Between section 27 & 34 - Just west of County Road #23
- #2A - Between sections 27 & 28 - Just north of Intersection
- #3A - Between sections 30 & 31 - Just west of Intersection
- #4A - Just off 22nd Avenue East and North of 3M Plant adjacent to Railroad track
- #5A - Between sections 20 & 21 - Just North of US Highway #14
- #6A - Between sections 17 & 20 on East end of mile on 18th Street

Brookings Township:

- #1B - Between sections 14 & 15 - Just north of US Highway #14 on Western Avenue
- #2B - Between sections 16 & 17 - Just north of US Highway #14 on 28th Avenue
- #3B - Between sections 17 & 18 - Just north of US Highway #14 on 467th Avenue

Volga Township:

- #1V - Between sections 13 & 14 - Just north of US Highway #14 and Volga Soybean Plant
- #2V - Between sections 15 & 16 - Just north of US Highway #14 on 463rd Avenue

bypass may impact fewer people in the rural area, the financial impact on many would be great, not only in loss of land, income, and value, but also a possible loss of a viable farming unit resulting in the loss of that farm.

The bypass proposal indicates that wetland mitigation will be zero for the bypass because a resident has indicated a donation of land for this. The land is not identified so it is difficult to know if the land is acceptable to replace federally designated wetlands. If the bypass is to be studied, particular attention should be given to this concern in the DEIS.

UTILITY ISSUES

Brookings County has concern for the utilities that serve our county. The financial and environmental impact of these utilities is unknown at this time, which contributes to genuine trepidation. These utilities include, but are not limited to:

- 1. Rural Telephone Cooperative ITC
- 2. US West Communications
- 3. Northern Natural Gas
- 4. Northwestern Public Service
- 5. Ottertail Power Company
- 6. Sioux Valley Southwestern Electric
- 7. Kingbrook Rural Water
- 8. Brookings Deuel Water
- 9. Brookings Municipal Utilities
- 10. Brookings to Aurora pipeline

The Brookings County Board of County Commissioners recognizes the necessity of rail transport, but is also responsible to its citizens, both current and future, to maintain the environment and to promote a high standard of living. We respectfully submit these comments for STB information and consideration. Thank you.

Sincerely,

Carol A. Pitts
Carol A. Pitts, Chairperson

The Brookings County Board of County Commissioners
Carol A. Pitts, Chairperson
Ray Santema, Vice Chairperson
Sara Kneip
Barbara Telkamp
Don Larson

All County Roads are paved surface. (School traffic included.)

Brookings County Roads:

- #12 - County Road #5B - Just north of RR Tracks in Volga
- #13 - County Road #7B - Just north of US #14
- #14 - County Road #9B - Just north of US #14
- #15 - County Road #77B - Just north of US #14
- #16 - Brookings Landfill Road - Just north of US #14 Bypass

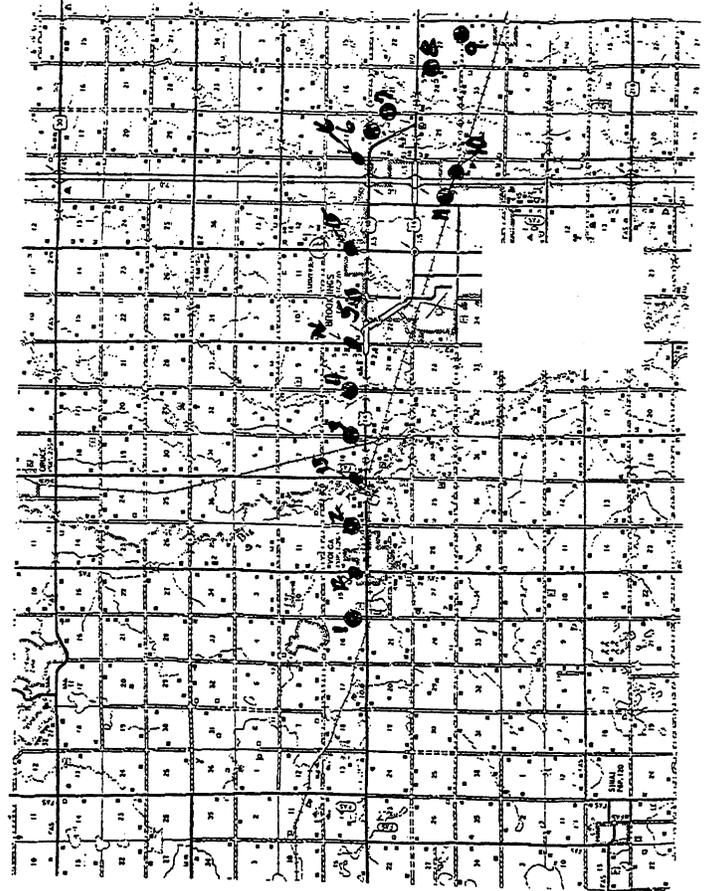
Sincerely,

Theodore V. Eggebraaten
Theodore V. Eggebraaten,
Superintendent

TVE/cmg

Brookings County special counts - June 21-22, 1999

SITE	ADT
2V - 1	52
1V - 2	49
3B - 3	73
2B - 4	47
1B - 5	181
6A - 6	76
5A - 7	55
2A - 8	236
1A - 9	47
3A - 10	361
4A - 11	327
#5 - 12	1155
#7 - 13	545
#9 - 14	750
#77- 15	2350
LF - 16	540



East Dakota Water Development District
307 Sixth Street
City Plaza Mall
Brookings, SD 57006

(605) 688-6741 (605) 688-6744 Fax

June 28, 1999

Commissioner Barbara Telkamp
Brookings County Courthouse
314 Sixth Avenue
Brookings, South Dakota 57006

Dear Commissioner Telkamp:

As per your request, I have prepared a brief summary of the issues and concerns relating to water resources that should be considered in an Environmental Impact Study of the proposed DM&E railroad by-pass around the cities of Brookings and Volga.

Ground Water Issues - The proposed rail line will cross the Zone A - Critical Impact Zone, as defined in Section 1106, Aquifer Protection Overlay District, of the Brookings County zoning ordinance, for both City of Brookings public water supply well fields. The current line crosses a portion of Zone A for the eastern well field only. A significant amount of the balance of both the existing and proposed lines crosses aquifer Zone B - Secondary Impact Zone. While construction of the rail line will not directly impact the aquifer, the following should be considered.

1. Contingency plans should be developed for both City of Brookings well fields in the event of an accidental spill or discharge of a potential contaminant. While the relative risk is small, any contamination of the aquifer within Zone A is likely to have a rapid impact on the City's water supply. This would be of particular concern for the northern well field, where the proposed alternate route is adjacent and up gradient of the wells. Plans for prompt spill remediation and the possible short- and long-term replacement of the sources should be considered.
2. During the construction of the railroad grades across the aquifer, efforts should be made to minimize the disturbance of the overlying surface materials (soils and unsaturated sand and gravel). These materials represent the only protection to the aquifer from contamination events at land surface. Materials used to build up the grade should not be taken from the area immediately adjacent to the tracks. Removal of the soil adjacent to the tracks would create a direct conduit to the aquifer. This would be applicable to all portions of the railroad grade, whether over Zone A or Zone B.

Surface Water Issues - The proposed rail line will cross the many of the same water courses spanned by the current railroad. As such, it does not represent a significant change, but again, the following should be considered.

3. Care should be exercised in the design of the proposed bridges and box culverts to insure that they will not act as restrictions during periods of elevated river/stream flow. Restrictions can cause water to collect on the up-stream side of the crossing, inundating land and buildings. Installation of oversized bridges and culverts would go a long way toward eliminating this possibility.

Consideration should also be given to the resulting alteration of overland drainage that will result from the building of the new grade. This may of particular concern along the stretch of tracks between Six Mile Creek and North Deer Creek.
4. Finally, the addition of several new structures across the river and creeks may have an impact on the biological communities within these water bodies. Current investigations into the distribution of threatened species, such as the Topeka shiner, may shed some light on this issue.

If there is any additional information you might need, please let me know.

Sincerely,

Jay P. Gilbertson
Manager

Areas on the attached map are defined as follows:

- ♦ Red dotted area – represents Big Sioux Aquifer that has restricted land use zoning regulations
- ♦ Blue areas – are zone "A" for public water supplies; these areas have the most restrictive land use regulations
- ♦ #1 – Brookings City; East Well Field
- ♦ #2 – Brookings City North Well Field
- ♦ Black line – existing railroad corridor
- ♦ Orange line – proposed bypass route



Brookings County Sheriff's Office

315 Seventh Avenue
Brookings, S.D. 57006

Phone: (605) 696-8300
Fax: (605) 696-8330

Martin E. Stanwick

July 8, 1999

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

Attn: Elaine K. Kaiser, Chief, Section of EA
Environmental Filing



Dear Ms. Kaiser:

As Brookings County Sheriff, I have always had Public Safety concerns about the DM&E Railroad's existing crossings at rural county and township roads.

However, the upgrade and expansion of the bypass proposal around the North side of Brookings is even more of a major safety concern.

The bypass proposal creates 17 additional crossings. This proposal also creates extra daily crossings for the Sioux Valley and Brookings School Districts buses. Speed limits on state highways is 65 mph and 55 mph on county and township roads. The escalated rural speeds greatly increase the possibility of mishaps, especially at gravel crossings.

Add to the speed issue, poor visibility due to fog, rain, snow, crops and angles at intersections, and the concern intensifies. South Dakota laws allow restricted permits at the age of 14. Many inexperienced drivers and their passengers will encounter these numerous proposed crossings.

I realize the importance of rail transportation, but the safety of all citizens in this county remain a high priority of this department.

Sincerely,

Martin E. Stanwick, Sheriff

MES:kh

ENVIRONMENTAL DOCUMENT

Sioux Valley School District No. 5-5
BOX 278
200 HANSINA AVENUE
VOLGA, SOUTH DAKOTA 57071-0278
Phone (605) 627-5657 • Fax (605) 627-5291



June 14, 1999

Brookings County Commissioners
Brookings Courthouse
314 6th Ave
Brookings SD 57006

The City of Brookings has proposed a DM&E coal train bypass plan which will significantly impact the Sioux Valley School District. The School Board of Sioux Valley Schools would like to respond to this plan by providing the following information regarding student busing and safety.

Sioux Valley Schools presently has 348 eligible K-12 grade bus riders on six regular daily routes. Three of these routes travel north of Volga where 199 of these 348 students live. These three routes currently cross the railroad 14 times every school day. Of these 14 crossings, 12 are in Volga with warning lights at the intersections. If this bypass becomes a reality, the number of railroad crossings for our bus students will be 26 times per day at a minimum, raising tremendous safety issues.

Also of concern is the impact the bypass plan will have on a large number of our high school students who drive themselves to school and school-related activities both during the pre-dawn hours for morning practices and the late night hours returning home from various matches, games, or events. The railroad crossings in Volga are well-lit and have warning lights; however that may not be the case on the planned county road crossings. There are three county highways crossing the proposed bypass that may not have warning lights and certainly will not be as well-lit as the present railroad right-of-way through Volga. Combining the lack of railroad crossing lights or gates with the increased speed allowed on the county roads as compared to the city crossing speeds, the safety of our student drivers becomes a significant risk factor.

It is our belief that the current railroad right-of-way is presently satisfactory and safe for both our bus student and student drivers. However, we also strongly believe that the proposed railroad bypass right-of-way does not consider the increased safety risks for Sioux Valley students and is neither necessary nor reasonable.

Respectfully,
Sioux Valley Board of Education

NIORBRARA COUNTY COMMISSIONERS
COUNTY COURTHOUSE 402 SOUTH ELM
P.O. BOX 1238
LUSK, WYOMING 82225

DONNA I. RUFFING
RICHARD L. JAMES
THOMAS A. HAMILTON



Ph: 307/334-2211
Fax: 307/334-3013

February 21, 1998

Mr. Steve Thornhill
Burns & McDonnell
9400 Ward Parkway
Kansas City, MO 64114

RE: DM&E Railroad Application &
Environmental Impact Statement (EIS)

Dear Mr. Thornhill:

It has been brought to my attention that application was made on February 20, 1998 with the Surface Transportation Board to construct new railroad track in Wyoming--a portion of which is proposed in Niobrara County, Wyoming. It is my understanding that you have been contracted to conduct the environmental impact statement (EIS).

I, hereby, respectfully request to be named to the scoping board. My interest in being involved is to protect the custom, culture and heritage in decision making that affects the private property owners and citizens of Niobrara County. It is unknown to me who actually makes the appointments; therefore, I am sending copies to the Surface Transportation Board, the Wyoming Department of Transportation and DM&E Railroad.

A positive response to this request will be greatly appreciated.

Sincerely,

Donna I. Ruffing
Chairman

c: ✓ Surface Transportation Board
Wyoming DOT
DM&E Railroad

NIOBRARA COUNTY COMMISSIONERS
COUNTY COURTHOUSE 402 SOUTH ELM
P.O. BOX 1238
LUSK, WYOMING 82225

DONNA I. RUFFING
RICHARD L. JAMES
THOMAS A. HAMILTON

Phone (307) 334-2211
Fax (307) 334-3013

March 17, 1998

Secretary
Surface Transportation Board
1825 K Street, N.W.
Washington, D.C. 20423

RE: Finance Docket No. 33407
Dakota Minnesota & Eastern Railroad (DM&E)
Construction and Operation in Wyo, SDak & Minn

Dear Sirs:

This letter is in opposition to the above-entitled matter regarding the construction of approximately 23 miles of railroad across the northeast corner of Niobrara County, Wyoming. The following concerns are given for your consideration:

1. **Private Property Rights** - The proposed corridor involves private landowners, plus the State of Wyoming and the Bureau of Land Management in Niobrara County. Not one private landowner has indicated a willingness to relinquish their property for an easement to DM&E. Private property rights are granted under the Constitution of the United States, the Wyoming State Constitution, and protected by the Niobrara County Land Use Plan.

2. **Land Use Plan** - The Niobrara County Land Use Plan, adopted October 1, 1996, protects the culture, custom, economic and community stability. The policy on page 6 provides:

"The Niobrara County Commission (NCC) will support the protection of private property rights as provided in the U.S. Constitution. The NCC will support the private landowner in Niobrara County against the taking of private land by regulatory action or in-action and will protect the residents from government regulation which infringes on private property rights and will limit and control local, state and federal government and/or international and global regulations."

The proposed DM&E railroad construction has the potential to adversely affect this policy.

Page Two
Surface Transportation Board
March 17, 1998

3. **Planning and Zoning Commission** - The Niobrara Planning & Zoning Commission was re-established on November 19, 1996. On July 22, 1997 the Niobrara County Commissioners approved and accepted the Planning & Zoning Commission's Zoning resolution declaring

"...all of Niobrara County outside of the corporate limits of incorporated towns be zoned as 'Class V - Agriculture' and outlining the process for changing zoning..."

Pursuant to this process, DM&E is required to request a change of use from agriculture to Class IV - Industrial.

4. **Environmental Quality** - Niobrara County is fortunate to have excellent air, noise and water quality due, basically, to the absence of industrial development.

a. Noise from train engines, clacking wheels and whistles will interrupt the otherwise pristine air. When conditions are right, whistles can be heard for up to ten (10) miles.

b. Coal dust blown from the passing cars will accumulate in the nearby grasses making them inedible and promoting potential fire dangers.

c. The proposed corridor is immediately adjacent to and crosses over the Cheyenne River. The landowners have just recently expended valuable time and resources to remove that segment of the Cheyenne River from the Wyoming Department of Environmental Quality's (DEQ) 303(d) list of impaired streams under the Clean Water Act of 1972. Disturbance of the highly erodible soils in the area may result in siltation to the streams and rivers in the area. Will a point source permit for DM&E be required? Will the proposed construction affect non-point source allocations in the future?

Construction of the proposed railroad has the potential to pollute all of our environmental resources.

5. **National Natural Landmark (NNL)** - The Lance Creek Fossil Area National Natural Landmark (287,160 acres) is within two (2) miles of the proposed railroad construction. The paleontological assets are not limited to the imaginary boundaries of the NNL, but exist in the area proposed for construction. In addition, other historic and valuable cultural assets are present in the proposed construction area.

6. **Economic Development** - DM&E has attempted to convince us the financial advantages to our County:

a. **Valuation** - will add 23 miles of track x projected \$1.2 million to our valuation. DM&E's projections are flawed. If the railroad is completed, the State of Wyoming uses a formula that averages the value of all their miles of track in the U.S. thereby decreasing the value to Niobrara County. The Niobrara County Assessor has no input into the process of determining the evaluation. That process is conducted in its entirety by the State of Wyoming's Department of Revenue.

Page Three
Surface Transportation Board
March 17, 1998

b. **Property Taxes** - Unspecified amount, subject to valuation. As stated above, the Wyoming Department of Revenue will determine the DM&E's property valuation. Niobrara County is responsible for levying and collecting the taxes based on that valuation. DM&E's history on the payment of taxes speaks for itself--a protest was filed in Fall River County, South Dakota for a \$600 tax assessment. We do not believe we want or need, this type of economic development within our County. We could possibly be spending more to collect the taxes than we would receive.

c. **Sales Tax** - DM&E has projected an increase to our sales tax. It is unknown how this would occur in our County. It is more than likely that construction workers would live and spend their money in either South Dakota or one of the other affected counties. Thus, there would be no benefit to Niobrara County.

d. **Jobs** - Proposed jobs, construction or post-construction, are a highly unlikely possibility for Niobrara County. Again, jobs will probably be created in South Dakota or at the mine location in the Powder River Basin.

7. **Safety and Health Issues** - The proposed corridor across northeastern Niobrara County is approximately 50-60 miles from the county seat, Lusk. The volunteer fire department, the ambulance, the emergency management technician volunteers and the hospital are based in Lusk. Should the need arise for their services, it would take approximately one (1) hour to respond with an additional hour back to the hospital. The same time-frame would be true from Newcastle in Weston County. DM&E's failure to comply with safety requirements on their existing line does not indicate a commitment on the safety and well-being to those exposed to the proposed railroad.

8. **Need for a Third Railroad** - At the present time it appears there is no need for a third railroad into the Powder River Basin. Currently, Union Pacific Railroad and Burlington Northern Santa Fe are not operating at full capacity. By Kevin Schieffer's own admission, "the problem is not getting coal out of Wyoming--the bottleneck occurs the further east the trains go". Why not build more rail lines "further east"?

9. **Union Pacific and Burlington Northern Interest**- A relationship between DM&E and the two existing railroads in the Powder River Basin already exists. DM&E's financial statement, ending December 1995, indicates the "repayment agreement to the C&NW Series D Senior Debt Note is subject to certain restrictions on the sale of any DM&E common stock or rail freight assets". Chicago Northwestern is a subsidiary of Union Pacific Railroad, who is the ultimate beneficiary and who already has access to the Powder River Basin.

Page Four
Surface Transportation Board
March 17, 1998

Summary

The Niobrara County Commissioners are opposed to the construction of approximately 23 miles of railroad across its northeast corner. The private property owners have not indicated a willingness to relinquish their property. Our environmental resources and quality of life may be threatened. The possible increase to the County's valuation does not outweigh the potential problems associated with railroad operations and the rights of the private property owners. The safety and well-being of the residents and workers may be in jeopardy. It appears there is no need to construct an additional rail line into Wyoming.

Alternatives

We respectfully request consideration that DM&E construct their rail line to the Powder River Basin along one of the existing railroad corridors (BNSF or UP), both of which they have access. Neither may be a direct route, however it would eliminate destroying an additional section of "the wide open spaces".

These comments are made pursuant to the legal notice in *The Lusk Herald* stating the comment period deadline as March 27, 1998. However, we reserve the right to make additional comments at a later date.

Your careful consideration of our comments to DM&E's application will be appreciated.

Sincerely,

Donna I. Ruffing
Donna I. Ruffing, Chairman
Richard L. James
Richard L. James, Member
Thomas A. Hamilton
Thomas A. Hamilton, Member

c: K. Schieffer/DME
Senator Craig Thomas
Senator Mike Enzi
Representative Barbara Cubin
Governor Jim Geringer



City of Newcastle
10 W. WARWICK
NEWCASTLE, WYOMING 82701
307-748-3838

6/3/98

Ms. Victoria Ruten
Section of Environmental Analysis
Surface Transportation Board
1925 K Street
Washington, D.C. 20423

Dear Ms. Ruten:

Enclosed in my comment sheet on the environ-
mental analysis for the proposed Boulder River
Expansion project of the DM&E Railroad. I
encourage early review and favorable
reports as this is a very needed project
through our part of the state. The number
and length of the trains passing through
our community every day is very disruptive
and potentially dangerous for our citizens. Over
60 trains per day disrupts our traffic at
every crossing, they are noisy, the diesel
fumes are always present and the trains
pass both of our schools which are adjacent
to the railroad tracks.

The new DM&E Railroad should relieve
some of these problems and provide comp-
etition for the BNSF Railroad we now must
 contend with. Thank you, Lawrence P. S.

Page 2
Comments on Draft Scope of Study
July 1, 1998

Page 5, 6. Noise - This is a "pristine" area with no noise. Even Victoria Ruten,
SEA Project Manager, commented during her visit how quiet it
is.

B. Object to the use of eight (8) trains per day as the threshold. Suggest
that in this area the threshold should be zero (0).

Page 6, 9. Safety - Add a paragraph to deal with problems associated with providing
fire protection, ambulances and hospital care to remote area.

Page 7, 14. Environmental Justice - Add a paragraph on financial impact to
Counties, both negative and positive.

B. Specifically identify "agricultural families" as minority or low income
group.

Your consideration of these comments will be appreciated.

Sincerely,

Donna I. Ruffing
Donna I. Ruffing
Chairman

Certification

I, hereby, certify that a copy of this comment letter has been mailed on this date to
each of the individuals listed as a Party of Record (6/5/98) and as amended (6/24/98).

Donna I. Ruffing
Donna I. Ruffing

NIORARA COUNTY COMMISSIONERS
COUNTY COURTHOUSE 402 SOUTH ELM
P.O. BOX 1238
LUSK, WYOMING 82225

DONNA I. RUFFING
RICHARD L. JAMES
THOMAS A. HAMILTON

Ph: 307/334-2211
Fax: 307/334-3013

July 3, 1998

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

ATTN: Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing

RE: Comments on Draft Scope of Study

Dear Ms. Kaiser:

We, respectfully, request consideration of the following comments relative to the
proposed new construction by DM&E Railroad in Niobrara County, Wyoming:

Page 3, 1. Land Use - Add a paragraph to "identify the number of private
landowners willing or unwilling to sell their property for the
proposed new rail construction"

Page 4, 5. Air-Quality - Add a new paragraph to specifically identify and quantify
emissions (e.g. particulate matter) caused by the proposed
railway traffic.

A. Object to the use of eight (8) trains per day as a threshold. This area is
presently "pristine", and one (1) train per day will be a degradation to the
environment.

B. Object to the use of three (3) trains per day as a threshold. One (1) train
per day will be a degradation to the environment.

D. Object to the use of 5,000 as the average daily vehicle traffic level for
potential air emissions increases from vehicle delay. There are currently
no grade crossings in the proposed area, and request the vehicle traffic
level should be one (1).



APPENDIX C
Scoping and Outreach Material

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**PUBLIC INFORMATION AND SCOPING OPEN HOUSE
PROPOSED POWDER RIVER BASIN EXPANSION PROJECT
WYOMING, SOUTH DAKOTA, AND MINNESOTA**

INTRODUCTION

The Surface Transportation Board's Section of Environmental Analysis (SEA) will be preparing an Environmental Impact Statement (EIS) analyzing the potential significant environmental issues associated with the proposed Powder River Basin Expansion Project. SEA is conducting a series of open house meetings to inform the public about the proposed project and obtain public comments about environmental concerns and issues. This sheet provides an explanation of the purpose of the workshop, workshop format, and a brief overview of the proposed project. A separate sheet is available for you to record your written comments on the project for our use in determining the scope of study for the EIS.

PURPOSES OF THE OPEN HOUSE

The purposes of this public information and scoping open house are: to explain the proposed project, to explain the environmental review process, and to obtain your comments and concerns regarding the potential environmental issues and impacts of the project. The scope of study of the EIS will be based on comments and concerns expressed by agencies and the public at scoping workshops, as well as on site inspections by SEA staff and independent analysis by the SEA staff and its third party consultant, Burns & McDonnell.

OPEN HOUSE FORMAT

This open house is designed to encourage your participation in the environmental review process. Representatives of the SEA, Burns & McDonnell, and the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) are available to answer your questions and hear your concerns. Please feel free to speak with these individuals one-on-one or in small discussion groups. No formal presentations will be made. Maps of the proposed project are provided for your review. You are free to come and go as you please.

COMMENT SHEETS

After you meet with the various representatives and view the exhibits, please take the time to fill out the attached comment sheet regarding your interest in the project, your environmental concerns, and possible mitigation measures. Submission of a comment sheet will enable us to add your name to our mailing list for subsequent information and filings on the project. The comment sheet may be completed and returned before leaving the workshop or mailed to the STB by July 10, 1998 at the address provided on the comment sheet.

PROJECT INFORMATION

A brief, overall description of the proposed project is provide on the back of this page. For more information you may access the STB website at www.stb.dot.gov or the DM&E website at www.dmerail.com.

POWDER RIVER BASIN EXPANSION PROJECT PROJECT OVERVIEW INFORMATION

The proposed rail construction project, referred to as the Powder River Basin Expansion Project, would involve the construction and operation of 280.9 miles of new rail line by the Dakota, Minnesota & Eastern Railroad Corporation (DM&E), Brookings, South Dakota. The project would provide access for a third rail carrier, along a second rail line, to serve the region's coal mines and transport coal eastward from the Powder River Basin. New rail construction would include 262.03 miles extending off DM&E's existing system near Wasta, South Dakota, extending generally southwesterly to Edgemont, South Dakota and then westerly into Wyoming to connect with existing coal mines located south of Gillette, Wyoming. This portion of the new construction would traverse portions of Custer, Fall River, Jackson, and Pennington Counties, South Dakota and Campbell, Converse, Niobrara, and Weston Counties, Wyoming.

New rail line would also include 13.31 miles around Mankato, Minnesota within Blue Earth and Nicollet Counties. DM&E currently has trackage on both sides of Mankato, accessed by trackage rights on rail line operated by Union Pacific Railroad (UP). The proposed Mankato construction would provide DM&E direct access between their existing lines, avoid operational conflicts with UP, and route rail traffic around the southern side of Mankato, avoiding the downtown area.

The final new rail construction would involve a connection between the existing rail systems of DM&E and I&M Rail Link. The connection would include construction and operation of 2.94 miles of new rail line near Owatonna, Steele County, Minnesota. The connection would allow interchange of rail traffic between the two carriers.

In order to transport coal over the existing system, DM&E proposes to rebuild 597.8 miles of rail line along its existing system. The majority of this, 584.95 miles, would be along DM&E's mainline between Wasta, South Dakota, and Winona, Minnesota. An additional 12.85 miles of existing rail line between Oral and Smithwick, South Dakota would also be rebuilt. Rail line rebuilding would include rail, tie, and ballast replacement, additional sidings, signals, grade crossing improvements, and other systems.

The principle commodity transported by the project is anticipated by DM&E to be coal. However, the project would be available to transport other commodities for shippers which may desire rail access. Existing shippers along the existing DM&E system will continue to receive rail service.

**PROJECT SCOPING COMMENT SHEET
FOR THE
SECTION OF ENVIRONMENTAL ANALYSIS
SURFACE TRANSPORTATION BOARD**

**PROPOSED POWDER RIVER BASIN EXPANSION PROJECT
WYOMING, SOUTH DAKOTA, AND MINNESOTA**

The Surface Transportation Board and Burns & McDonnell appreciate you taking the time to participate in the scoping process for the proposed Powder River Basin Expansion project. We request your input on the environmental issues and concerns associated with the proposed project. Please answer the following questions and place this sheet in the Comment Sheet Return Box located at Station 3, or you may mail it to: Ms. Victoria Rutson / Section of Environmental Analysis / Surface Transportation Board / 1925 K Street / Washington, D.C. 20423 by July 10, 1998.

1) What is your interest in the project?

2) What potential environmental issues and impacts are you concerned about?

3) What mitigative measures would you suggest for your concerns?

4) Have you seen the draft Scope of Study for the project? Yes No
What environmental topic areas and issues do you feel should be addressed in the EIS?

Please clearly include your name and address so you can be added to our mailing list for subsequent information and filings on the project.

Name: _____

Address: _____

Phone: _____

Thank you for taking the time to provide us with your comments.

SUPPLEMENTARY INFORMATION

Draft Scope of Study for the EIS:

Proposed Action and Alternatives:

The proposed action, referred to as the Powder River Basin Expansion Project, would involve the construction and operation of 280.9 miles of new rail line and the rebuilding of 597.8 miles of existing rail line by the Dakota, Minnesota & Eastern Railroad Corporation (DM&E), Brookings, South Dakota, as described in the February 20, 1998 application for construction and operation authority for the project filed by DM&E and in the March 27, 1998 Notice of Intent to Prepare an EIS published in the Federal Register by the Board.

Consistent with its jurisdiction under the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995), the Board intends to conduct an environmental analysis of the new construction, and the increase in operations over DM&E's existing system. The EIS will not consider any proposed construction or improvements to DM&E's existing system, but will address the anticipated impacts of the projected increases in train traffic over the entire existing system.

The reasonable and feasible alternatives that will be evaluated in the EIS are (1) the no-action alternative (2) construction of the project along the identified preferred alignments in Wyoming and South Dakota for the mainline extension and in Minnesota for the Mankato Bypass and Owatonna connecting track and (3) construction of the project along each of the alternative alignments identified in the application filed by DM&E and any other subsequently identified alternatives determined reasonable and feasible in Wyoming and South Dakota for the mainline extension and in Minnesota for the Mankato Bypass and Owatonna connecting track.

Environmental Impact Analysis

Proposed New Construction

Analysis in the EIS will address the proposed activities associated with the construction and operation of new rail facilities and their potential environmental impacts, as appropriate. The scope of the analysis will include the following activities:

1. Proposed construction of new rail mainline extension to access coal mines south of Gillette, Wyoming.
2. Proposed construction of new rail mainline to bypass DM&E's existing trackage rights on Union Pacific Railroad in Mankato, Minnesota.

3. Proposed construction of new rail line connection between DM&E and I&M Rail Link south of Owatonna, Minnesota.
4. Proposed upgrade along DM&E's existing track.

Impact Categories

The EIS will address potential impacts from the proposed construction and operation of new rail facilities on the human and natural environment. Impact areas addressed will include the categories of land use, biological resources, water resources, geology and soils, air quality, noise, energy resources, socioeconomics as they relate to physical changes in the environment, safety, transportation systems, cultural and historic resources, recreation, aesthetics, and environmental justice. The EIS will include a discussion of each of these categories as they currently exist in the project area and address the potential impacts from the proposed project on each category as described below:

1. Land Use

The EIS will:

- A. Describe existing land use patterns, management, and ownership (private and public) within the project area and identify those land uses and the amounts of each potentially impacted by new rail line construction.
- B. Describe the potential impacts associated with the proposed new rail line construction to cropland, pastureland, rangeland, grassland, woodland, developed land, school endowment land, BLM land, Forest Service lands, state lands and any other land uses identified within the project area. Such potential impacts may include but not be limited to impacts to farming/ranching activities, introduction of noxious weeds, fire hazard, incompatibility with existing land uses, relocation of residences or businesses, and conversion of land to railroad uses.
- C. Propose mitigative measures such as to minimize or eliminate potential adverse project impacts to land use, as appropriate.

2. Biological Resources

The EIS will:

- A. Describe the existing biological resources within the project area including vegetative communities, wildlife and fisheries, federally threatened or endangered species, and any sensitive vegetation and wildlife identified and the potential impacts to these resources resultant from construction and operation of new rail line.

- B. Describe the wildlife sanctuaries, refuges, and national or state parks, forests, or grasslands within the project area and the potential impacts to these resources resultant from construction and operation of new rail line.
- C. Propose mitigative measures to minimize or eliminate potential adverse project impacts to biological resources, as appropriate.

3. Water Resources

The EIS will:

- A. Describe the existing surface and groundwater resources within the project area, including lakes, rivers, streams, stock ponds, wetlands, aquifers, wells, and floodplains and the potential impacts on these resources resultant from construction and operation of new rail line.
- B. Describe the existing uses of water resources in the project area for irrigation, livestock, residential, and municipal water supply.
- C. Describe the permitting requirements for the proposed new rail line construction in regard to wetlands, stream crossings, water quality, and erosion control.
- D. Propose mitigative measures to minimize or eliminate potential adverse project impacts to water resources and users, as appropriate.

4. Geology and Soils

The EIS will:

- A. Describe the geology and soils found within the project area, including unique or problematic geologic formations or soils and prime farmland soils.
- B. Describe measures employed to avoid or construct through unique or problematic geologic formations or soils.
- C. Describe the impacts of new rail line construction on prime farmland soils.
- D. Describe the potential general impacts to paleontological resources in the project area due to project construction, if necessary and required.
- E. Describe the potential impacts to paleontological resources identified by ground survey of the preferred construction alternative alignment on federal lands, if necessary and required.
- F. Propose mitigative measures to minimize or eliminate potential adverse project impacts to geology, soils, and paleontological resources, as appropriate.

5. Air Quality

The EIS will:

- A. Discuss the existing air quality in the project area.
- B. Evaluate rail air emissions on new rail that exceed the Board's environmental thresholds in 49 CFR 1105.7(e)(5)(I), in an air quality attainment or maintenance area as designated under the Clean Air Act . The threshold anticipated to apply to this project is eight trains per day on any segment of new rail line.
- C. Evaluate rail air emissions on new rail line, if the proposed project affects a Class I or non-attainment area as designated under the Clean Air Act. The threshold for Class I and non-attainment areas anticipated to apply to this project is 3 trains per day or more.
- D. Evaluate the potential air quality impacts associated with the increased availability and utilization of Powder River Basin coal.
- E. Discuss the potential air emissions increases from vehicle delays at new grade rail crossings where the rail crossing is projected to experience an increase in rail traffic over the threshold described above for attainment, maintenance, Class I, and non-attainment areas and that have an average daily vehicle traffic level of over 1,000. Emissions from vehicle delays at new grade rail crossings and idling diesel engines and coal dust will be factored into the emissions estimates for the affected area, as appropriate.
- F. Describe the potential air quality impacts of emissions from idling diesel locomotives and coal dust produced during train operation.
- G. Describe the potential air quality impacts resulting during new rail line construction activities.
- H. Propose mitigative measures to minimize or eliminate potential adverse project impacts to air quality, as appropriate.

6. Noise

The EIS will:

- A. Describe existing noise receptors and conditions in the project area.
- B. Describe the potential noise impacts during new rail line construction.
- C. Describe potential noise impacts of new rail line operation for those areas that exceed the Board's environmental threshold of eight or more trains per day.

- D. Propose mitigative measures to minimize or eliminate potential adverse project impacts to noise receptors, as appropriate.

7. Energy Resources

The EIS will:

- A. Describe the potential environmental impact of the new rail line on the transportation of energy resources and recyclable commodities.
- B. Describe the environmental impacts of the new rail line on utilization of the nations energy resources.
- C. Propose mitigative measures to minimize or eliminate potential adverse project impacts to the transportation of energy resources and recyclable commodities, as appropriate.

8. Socioeconomics

The EIS will:

- A. Address socioeconomic issues shown to be related to changes in the physical environment as a result of the proposed action.
- B. Propose mitigative measures to minimize or eliminate potential adverse project impacts to socioeconomics, as appropriate.

9. Safety

The EIS will:

- A. Describe rail/highway grade crossing safety factors at new grade crossings, as appropriate.
- B. Describe the potential for increased probability of train accidents, derailments, and train/vehicular accidents at new grade crossings, as appropriate.
- C. Describe the potential for disruption and delays to the movement of emergency vehicles due to new rail line construction and operation.
- D. Propose mitigative measures to minimize or eliminate potential adverse project impacts to safety, as appropriate.

10. Hazardous Materials

The EIS will:

- A. Describe any know hazardous materials sites along the preferred and alternative construction alignments.

- B. Describe the potential impacts to hazardous materials sites along the preferred and alternative alignments.
- C. Propose mitigative measures to minimize or eliminate potential adverse project impacts to hazardous materials, as appropriate.

11. Transportation Systems

The EIS will:

- A. Describe the potential effects of new rail line construction and operation on the existing transportation network in the project area including:
 - (1) impacts to other rail carriers' operations and
 - (2) vehicular delays at new grade crossings for those crossings having average daily vehicle traffic of 1,000 or more.
- B. Propose mitigative measures to minimize or eliminate potential adverse project impacts to transportation systems, as appropriate.

12. Cultural and Historic Resources

The EIS will:

- A. Describe the potential impacts to historic structures or districts previously recorded and determined potentially eligible, eligible, or listed on the National Register of Historic Places within or immediately adjacent to the right-of-way for the preferred and alternative construction alignments.
- B. Describe the potential impacts to archaeological sites previously recorded and either listed as unevaluated or determined potentially eligible, eligible, or listed on the National Register of Historic Places within the right-of-way for the preferred and alternative construction alignments.
- C. Describe the potential impacts to historic structures or districts identified by ground survey and determined potentially eligible or eligible for listing on the National Register of Historic Places within or immediately adjacent to the right-of-way for the preferred construction alignment.
- D. Describe the potential impacts to archaeological sites identified by ground survey and determined potentially eligible or eligible for listing on the National Register of Historic Places within the right-of-way for the preferred construction alignment.
- E. Propose mitigative measures to minimize or eliminate potential adverse project impacts to cultural and historic resources, as appropriate.

13. Recreation

The EIS will:

- A. Describe the existing recreational opportunities and activities present and undertaken in the project area.
- B. Describe the potential impacts of the proposed new rail line construction and operation on the recreational opportunities and activities in the project area.
- C. Propose mitigative measures to minimize or eliminate potential adverse project impacts to recreation, as appropriate.

14. Aesthetics

The EIS will:

- A. Describe any areas identified or determined to be of high visual quality, wilderness areas, or waterways designated as wild and scenic within the project area.
- B. Describe the potential impacts of the proposed new rail line construction on any areas identified or determined to be of high visual quality.
- C. Describe the potential impacts of the proposed new rail line construction on any designated wilderness areas.
- D. Describe the potential impacts of the proposed new rail line construction on any waterways considered for or designated as wild and scenic.
- E. Propose mitigative measures to minimize or eliminate potential adverse project impacts to aesthetics, as appropriate.

15. Environmental Justice

The EIS will:

- A. Describe the demographics in the project area and the immediate vicinity of the proposed new construction, as possible, including communities potentially impacted by the construction and operation of the proposed new rail line construction.
- B. Evaluate whether new rail line construction or operation activities would have a disproportionately high adverse impact on any minority or low-income groups.
- C. Propose mitigative measures to minimize or eliminate potential adverse project

impacts to minority or low-income groups, as appropriate.

Increased Traffic

Analysis in the EIS will address the potential environmental impacts associated with the increased level of rail traffic on DM&E's existing rail system, and the systems of other rail carriers as deemed appropriate, and relevant increases in barge traffic on the Mississippi River due to operation of the proposed new rail facilities. The scope of the analysis will include the analysis of anticipated changes in the levels of rail traffic along the existing DM&E system to be rebuilt and other appropriate rail systems and changes in barge traffic on the Mississippi River, directly associated with proposed new construction projects, to facilitate coal transportation. Those segments of rail line that meet or exceed the Board's thresholds for environmental review, as defined in 49 CFR 1105.7, will be evaluated. In cases where the Board's environmental rules do not provide a threshold, the EIS will use eight trains per day or more as the threshold for environmental evaluation.

Impact Categories

The EIS will address potential impacts from the proposed increases in trains operating over existing rail facilities on the human environment. Impact areas addressed will include the categories of air quality, noise, energy resources, safety, hazardous materials, transportation systems, and environmental justice. The EIS will address potential impacts from proposed increases in barges operating in the Mississippi River on these human resources as well as additional resources including but not limited to vegetation, fish and wildlife, federally threatened and endangered species, sensitive species as appropriate, water resources, recreation, and wildlife sanctuaries and refuges. The EIS will include a discussion of each of these categories as they currently exist in the project area and address the potential impacts from the proposed operational impacts of the project on each category as described below:

1. Air Quality

The EIS will:

- A. Evaluate rail air emissions for existing rail lines that exceed the Board's environmental thresholds in 49 CFR 1105.7(e)(5)(I), in an air quality attainment or maintenance area as designated under the Clean Air Act . The thresholds anticipated to apply to this project include:
 - (1) A 100 percent increase in rail traffic on any segment of DM&E's existing system.
 - (2) An increase of eight trains per day on any segment of rail line affected by the proposed construction.

- B. Evaluate rail air emissions for existing rail lines, if the proposed project affects a Class I or non-attainment area as designated under the Clean Air Act. Thresholds for Class I and non-attainment areas anticipated to apply to this project are as follows:
 - (1) An increase in rail traffic of 50 percent or more or

- (2) An increase of 3 trains per day or more.
 - C. Discuss the net increase in emissions from increased railroad and barge operations associated with the proposed operations over the existing DM&E system and other rail systems as appropriate.
 - D. Discuss the potential air emissions increases from vehicle delays at existing rail crossings where the rail crossing is projected to experience an increase in rail traffic over the thresholds described above for attainment, maintenance, Class I, and non-attainment areas and that have an average daily vehicle traffic level of over 1,000. Emissions from vehicle delays at existing rail crossings will be factored into the emissions estimates for the affected area.
 - E. Propose mitigative measures to minimize or eliminate potential adverse project impacts to air quality, as appropriate.
- 2. Noise**
The EIS will:
- A. Describe potential noise impacts of project operation on appropriate existing rail lines that exceed the Board's environmental thresholds of a 100 percent or more increase in rail traffic or an increase of 8 or more trains per day.
 - B. Identify whether proposed train operations on DM&E's existing rail lines will cause:
 - (1) An increase in noise levels of three decibels Ldn or more;
 - or
 - (2) An increase to a noise level of 65 decibels Ldn or greater. If so, an estimate of the number of sensitive receptors (e.g., schools, libraries, churches, residences) within such areas will be made based on site visits to those areas potentially affected.
 - C. Propose mitigative measures to minimize or eliminate potential adverse project impacts to noise receptors, as appropriate.
- 3. Energy Resources**
The EIS will:
- A. Describe the potential environmental impact on transportation of energy resources and recyclable commodities.
 - B. Describe the environmental impacts on utilization of the nations energy resources.
 - C. Propose mitigative measures to minimize or eliminate potential adverse project impacts to the transportation of energy resources and recyclable commodities, as appropriate.

4. Safety

The EIS will:

- A. Describe rail/highway grade crossing safety factors for existing grade crossings, as appropriate.
- B. Describe the potential for increased probability of train accidents, derailments, and train/vehicular accidents along the existing DM&E system, as appropriate.
- C. Describe the potential for disruption and delays to the movement of emergency vehicles at existing crossings due to rail operations on the existing DM&E system.
- D. Describe the changes at existing grade crosses implemented to increase safety at existing grade crossings due to increased rail operations on the DM&E system. Such changes would include signalization upgrades and conversion of grade crossings to grade separated crossings.
- E. Describe any impacts to barge safety.
- F. Propose mitigative measures to minimize or eliminate potential adverse project impacts to safety, as appropriate.

5. Hazardous Materials

The EIS will:

- A. Describe any know hazardous materials sites along the existing DM&E system to be rebuilt and any hazardous materials currently transported on this portion of the system.
- B. Describe the potential impacts to hazardous material sites and transportation along the existing DM&E system to be rebuilt.
- C. Propose mitigative measures to minimize or eliminate potential adverse project impacts to hazardous materials, as appropriate.

6. Transportation Systems

The EIS will:

- A. Describe the existing transportation system and network along the existing DM&E system to be rebuilt.
- B. Describe the potential effects of project construction and operation on the existing transportation network in the project area including:

- (1) impacts to other rail carriers' operations,
 - (2) vehicular delays at new grade crossings for those crossings having average daily vehicle traffic of 5,000 or more.
 - (3) and impacts to barge operations on the Mississippi River.
- C. Describe the effects of the proposed construction and subsequent operation of the proposed project throughout DM&E's existing system.
- D. Propose mitigative measures to minimize or eliminate potential adverse project impacts to transportation systems, as appropriate.

7. Environmental Justice

The EIS will:

- A. Describe the demographics in the project area and the immediate vicinity of the portion of DM&E's existing system to be rebuilt, as possible, including communities potentially impacted by the construction and operation of the proposed new rail line construction.
- B. Evaluate whether changes in rail line operation due to the new rail line construction would have a disproportionately high adverse impact on any minority or low-income groups.
- C. Propose mitigative measures to minimize or eliminate potential adverse project impacts to minority or low-income groups, as appropriate.

PRESS RELEASE
FROM THE SURFACE TRANSPORTATION BOARD
SECTION OF ENVIRONMENTAL ANALYSIS
POWDER RIVER BASIN EXPANSION PROJECT
ITINERARY FOR SCOPING WORKSHOPS

The Surface Transportation Board (STB), Section of Environmental Analysis (SEA), will be preparing an Environmental Impact Statement (EIS) for the Powder River Basin Expansion rail construction project proposed by the Dakota, Minnesota & Eastern Railroad Corporation. As part of the EIS process, the SEA will be holding public and agency scoping workshops to obtain public comments on the concerns of interested persons and the issues to be addressed in the EIS. Public scoping workshops will be informal workshops where representatives of the SEA will be available to talk with interested persons. Interested persons may come and go throughout the time designated for the workshop. Maps of the project alternatives will be available for review and to facilitate discussion and identification of specific areas of interest or concern. Project information sheets and questionnaires will be distributed to provide an overview of the project and obtain written comments.

SEA recognizes the importance of providing an opportunity for the public to participate in the scoping process. However, it is not possible for SEA to conduct scoping workshops in all affected communities. Therefore, SEA has attempted to hold public scoping workshops at locations and times providing reasonable convenience to persons within the potentially affected area. Workshops have been scheduled to allow SEA to optimize the time in the project area, both to meet with interested parties and review the project area on the ground, while still accommodating local activities, functions, and the availability of facilities. In particular, an additional public scoping workshop has been scheduled in Newcastle, Wyoming during the period SEA will be conducting other workshops and site visits in the area. The workshop will end promptly at 6 pm due to the spring concert being held at the school on the evening of the workshop. Additionally, the workshop in Hot Springs, South Dakota will end promptly at 7 pm due to the spring play at the Mueller Center on the evening of the workshop.

SEA encourages public participation in the EIS process. SEA realizes individual workshop times may not be convenient for some persons. Therefore, all workshops will be open to any interested persons and persons unable to attend a specific workshop are invited and encouraged to attend a workshop at an alternate site. Attending and providing comments at more than one workshop is not necessary. In addition, written comments may be submitted and accepted until July 10, 1998 on the scope of the EIS. A signed original and 10 copies of comments should be submitted to:

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

To ensure proper handling of your comments, you must mark your submission:

Attention: Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing

Scoping workshop for the proposed new construction in Wyoming and South Dakota will be held at the following times and locations:

Tuesday April 28 - **Newcastle, Wyoming** (public)
- Newcastle High School Gymnasium, 4-6 pm

Wednesday April 29 - **Cheyenne, Wyoming** (agency)
- Hitching Post Inn, 9-11 am
- **Wright, Wyoming** (public)
- Wright Town Hall Auditorium, 4-7 pm

Thursday April 30 - **Edgemont, South Dakota** (public)
- St. James Parish Center, 4-7 pm

Friday May 1 - **Hot Springs, South Dakota** (public)
- Mueller Center Annex, 4-7 pm

If you have any questions please contact Victoria Rutson of the STB at (202) 565-1545 or Steve Thornhill, independent STB contractor at (816) 822-3851.

PRESS RELEASE
FROM THE SURFACE TRANSPORTATION BOARD
SECTION OF ENVIRONMENTAL ANALYSIS
POWDER RIVER BASIN EXPANSION PROJECT
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SEA encourages public participation in the EIS process. SEA realizes individual workshop times may not be convenient for some persons. Therefore, all workshops will be open to any interested persons and persons unable to attend a specific workshop are invited and encouraged to attend a workshop at an alternate site. Attending and providing comments at more than one workshop is not necessary. In addition, written comments may be submitted and accepted until July 10, 1998 on the scope of the EIS. A signed original and 10 copies of comments should be submitted to:

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Chief, Section of Environmental Analysis
Environmental Filing

Scoping workshop for the proposed project in Minnesota will be held at the following times and locations:

- Tuesday May 12 - **Mankato, Minnesota** (public)
 - City Hall, 4-7pm

- Wednesday May 13 - **Rochester, Minnesota** (public)
 - Mayo Civic Center, 4-7pm

- Thursday May 14 - **St. Paul, Minnesota** (agency)
 - Judicial Center Building, 1-3pm

- Tuesday June 30 - **Springfield, Minnesota** (public)
 - Springfield Public Library

If you have any questions please contact Victoria Rutson of the STB at (202) 565-1545 or Steve Thornhill, independent STB contractor at (816) 822-3851.

PRESS RELEASE
FROM THE SURFACE TRANSPORTATION BOARD
SECTION OF ENVIRONMENTAL ANALYSIS
POWDER RIVER BASIN EXPANSION PROJECT
ITINERARY FOR SCOPING WORKSHOPS

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SEA encourages public participation in the EIS process. SEA realizes individual workshop times may not be convenient for some persons. Therefore, all workshops will be open to any interested persons and persons unable to attend a specific workshop are invited and encouraged to attend a workshop at an alternate site. Attending and providing comments at more than one workshop is not necessary. In addition, written comments may be submitted and accepted until July 10, 1998 on the scope of the EIS. A signed original and 10 copies of comments should be submitted to:

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Chief, Section of Environmental Analysis
Environmental Filing

The remaining scoping workshops for the proposed project will be held at the following times and locations:

- Tuesday June 16 - **Wall, South Dakota** (public)
- Wall Community Center, 4-7pm
- Wednesday June 17 - **Pierre, South Dakota** (agency)
- Budget Host Inn, 9-11 am
- **Pierre, South Dakota** (public)
- Budget Host Inn, 4-7 pm
- Thursday June 18 - **Huron, South Dakota** (public)
- The New Plains, 4-7 pm
- Monday June 29 - **Brookings, South Dakota** (public)
- Community Room, 4-7 pm
- Tuesday June 30 - **Springfield, Minnesota** (public)
- Springfield Public Library, 4-7 pm

If you have any questions please contact Victoria Rutson of the STB at (202) 565-1545 or Steve Thornhill, independent STB contractor at (816) 822-3851.

PRESS RELEASE
FROM THE SURFACE TRANSPORTATION BOARD
SECTION OF ENVIRONMENTAL ANALYSIS
POWDER RIVER BASIN EXPANSION PROJECT
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SEA encourages public participation in the EIS process. All workshops will be open to any interested persons. In addition, written comments may be submitted and accepted until July 10, 1998 on the scope of the EIS. A signed original and 10 copies of comments should be submitted to:

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Attention: Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing

An additional scoping workshop has been scheduled to allow additional opportunities for concerned persons to participate in the scoping process. This workshop for the proposed project will be held at the following time and location:

Wednesday July 8 - **Winona, Minnesota** (public)
 - Winona City Council Chambers, Winona City Hall, 4-7 pm

If you have any questions please contact Victoria Rutson of the STB at (202) 565-1545 or Steve Thornhill, independent STB contractor at (816) 822-3851.

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SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Section of Environmental Analysis

June 5, 2000

To: Director of Public Service Announcements

From: Victoria Rutson, Project Manager

RE: Finance Docket 33407 - Dakota, Minnesota & Eastern Railroad - Construction into the Powder River Basin - Public Service Announcement

Attached is a public service announcement regarding a proposed railroad construction project that may affect your community.

On February 20, 1998, the Dakota, Minnesota & Eastern Railroad filed an application with the Surface Transportation Board (Board) to construct and operate new rail line facilities in east-central Wyoming, southwest South Dakota, and south-central Minnesota. The Board is currently reviewing the railroad's application and would like to inform your local community of the proposed rail line construction and operation and provide instruction on how to obtain further information. We are asking your station to please air the attached public service announcement as many times as possible between June 6 and June 9, 2000.

Should you have any questions or comments, please contact Victoria Rutson, SEA's Project Leader for the Dakota, Minnesota & Eastern Railroad's Proposed Construction into the Powder River Basin, by calling the Board's toll-free environmental hotline at 1-877-404-3044.

Thank you for your assistance.

**Surface Transportation Board
Section of Environmental Analysis**

**Dakota, Minnesota & Eastern Railroad's Proposed Construction into the
Powder River Basin**

**PSA Radio Spot
:30**

On June 2, 2000, the Surface Transportation Board mailed 5,000 postcards to people on the Board's distribution list for the Dakota, Minnesota & Eastern Railroad's proposed rail line construction into Wyoming's Powder River Basin. These postcards will allow the Board to update its mailing list and give interested people the opportunity to receive a copy of the Draft Environmental Impact Statement. Postcards must be returned by July 3, 2000.

If you have questions, please call the Board's toll-free environmental hotline at 1-877-404-3044.

*Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001*



News

FOR RELEASE
06/02/2000 (Friday)
No. 00-26

Contact: Dennis Watson
(202) 565-1596
TDD/TDY 1-(800) 877-8339
www.stb.dot.gov

SURFACE TRANSPORTATION BOARD INITIATES BROAD POSTCARD MAILING TO ENSURE EFFECTIVE DISTRIBUTION OF DRAFT ENVIRONMENTAL IMPACT STATEMENT IN PROPOSED DAKOTA, MINNESOTA & EASTERN RAIL LINE CONSTRUCTION AND OPERATION CASE

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board's Section of Environmental Analysis (SEA) is mailing postcards to all parties of record and everyone currently on the Board's environmental distribution list for the Dakota, Minnesota & Eastern Railroad's (DM&E's) proposed rail line construction into Wyoming's Powder River Basin--approximately 5000 parties. The postcards will provide a more streamlined and efficient process for making the Draft Environmental Impact Statement (Draft EIS) available to interested parties and the general public.

The postcards will allow SEA to verify and update names and mailing addresses. In addition, the postcards will inform the public that the Draft EIS will be available on the Board's website, at www.stb.dot.gov, and at certain public locations within the project area, such as libraries. Finally, the postcards will provide those interested in receiving the actual document with a choice of formats, including CD-ROM.

SEA estimates that, because of the size and scope of the proposal, the Draft EIS will be quite large--approximately 2000 pages and several volumes. To reduce the amount of

paper needed, limit waste, and wisely use scarce natural resources, SEA encourages recipients of the postcards to review the Draft EIS via the Board's web site, CD-ROM, and at publicly available locations whenever possible. Those who wish the CD-ROM version or hard copies of all or part of the Draft EIS will be asked to return the postcards by July 3, 2000.

SEA, together with its cooperating agencies, anticipates issuing the Draft EIS later this summer. The Draft EIS will address a wide range of environmental issues, including alternatives, and contain recommended environmental mitigation measures, as appropriate.

Prior to issuing the Draft EIS, SEA will publish notice of the document's availability in the Federal Register and local newspapers. SEA will provide at least 45 days for public review and comment. At the close of the public comment period, SEA, together with its cooperating agencies, will prepare a Final EIS responding to the comments received on the Draft EIS. In reaching their respective decisions in this case, the Board and cooperating agencies will take into account the full environmental record, including the Draft EIS, the Final EIS, and all public and agency comments received.

The Powder River Basin Project is DM&E's proposal to construct approximately 280 miles of new rail line and upgrade approximately 600 miles of existing rail line in Minnesota, South Dakota, and Wyoming. The project would allow DM&E to extend its existing system westward to access coal mines in Wyoming's Powder River Basin. This proceeding is docketed at the Board as *Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin*, STB Finance Docket No. 33407.

Additional information regarding this proceeding may be obtained by telephoning SEA's toll-free Environmental Hotline at **1-877-404-3044**, or by viewing and downloading Board decisions in Finance Docket No. 33407 via the "Decisions and Notices" link on the Board's Website at **www.stb.dot.gov**.

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The Surface Transportation Board's Section of Environmental Analysis (SEA) and cooperating Federal agencies (U.S. Forest Service, U.S. Bureau of Land Management, U.S. Army Corps of Engineers, U.S. Bureau of Reclamation, and U.S. Coast Guard) currently are preparing a Draft Environmental Impact Statement for the Dakota, Minnesota & Eastern Railroad's proposed expansion of its rail line into the Powder River Basin. DM&E's proposal spans three states (MN, SD, and WY) and would involve constructing over 280 miles of new rail line and rebuilding 600 miles of existing rail line. The Draft EIS will identify a reasonable range of alternative actions, including the no-build alternative, analyze the potential environmental impacts of project-related activities, and recommend appropriate mitigation measures. The potential areas of impact include:

safety, noise, air quality, environmental justice, Native American concerns, cultural and historic resources, biological resources, hazardous materials, socioeconomics, water resources, energy resources, transportation systems, cumulative effects, recreation, land use, geology & soils, and aesthetics.

Because of the size and scope of the project, the Draft EIS will be quite large -- over 2,000 pages and several volumes. To reduce the amount of paper needed and limit waste, we will make the Draft EIS available for public review at a number of accessible locations within the project area. In addition, the document will be available on the Surface Transportation Board's web site (<http://www.stb.dot.gov>). For those who would like the entire document but have limited storage space, the Draft EIS will also be available on CD-ROM.

To receive the Draft EIS in the form desired, you **must** return the attached postcard, following the instructions below, by **July 3, 2000**.

- Remove the address label from the front of the postcard and place it in the address verification area. If name and/or address on the address label are incorrect, please **clearly and legibly** print your name and address in the address verification area of the postcard.
- Review the options and indicate your preferences by placing an **X** in the appropriate box on the reverse side of this form.

Please note: Your name will be removed from the DM&E project mailing list if this postcard is not returned.

If you have further questions, please call the Surface Transportation Board's toll-free environmental hotline at 1-877-404-3044.

SURFACE TRANSPORTATION BOARD
SECTION OF ENVIRONMENTAL ANALYSIS
1925 K Street, NW
WASHINGTON, DC 20423-0001



OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300
RETURN AFTER FIVE DAYS

Place
Stamp
Here

SURFACE TRANSPORTATION BOARD
SECTION OF ENVIRONMENTAL ANALYSIS
1925 K Street, NW
WASHINGTON, DC 20423-0001

SURFACE TRANSPORTATION BOARD
SECTION OF ENVIRONMENTAL ANALYSIS
1925 K Street, NW
WASHINGTON, DC 20423-0001



OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300
RETURN AFTER FIVE DAYS

FIRST CLASS
U.S. POSTAGE
PAID
Rockville, MD
Permit No. 4889

We are updating our mailing list for this project. Please check only one choice below:

- Yes, I want to stay on the mailing list. I want to receive ONLY the Executive Summary of the Draft EIS.
- Yes, I want to stay on the mailing list. I want to receive the Draft EIS (hard copy).
- Yes, I want to stay on the mailing list. I want to receive the Draft EIS (CD-ROM).
- Yes, I want to stay on the mailing list. But, I DO NOT want a copy of the Draft EIS, or the Executive Summary.

We will remove your name from the DM&E project mailing list if we do not receive this postcard from you.

Print name and address or affix address label here: _____

DAKOTA, MINNESOTA & EASTERN RAILROAD
CONSTRUCTION AND OPERATION PROPOSAL

POSTCARD MAILING

A Public Service Announcement informing the public of the postcard mailing, which asked citizens to confirm their address and request a copy of the Draft EIS, was faxed to the following media on June 5, 2000:

Media Source	City	State	
KZAT-FM Radio	Tama	IA	
KDAO-AM Radio	Marshalltown	IA	
KRTI-FM Radio	Newton	IA	
KSUX-FM Radio	Sioux City	IA	
KMNS-AM Radio	Sioux City	IA	
KZSR-FM Radio	Sioux City	IA	
KCSR-AM Radio	Chadron	NE	
KLLZ-FM Radio	Walker	MN	
KBHP-FM Radio	Bemidji	MN	
KNBJ-FM Radio	Bemidji	MN	
KKBJ-AM/FM Radio	Bemidji		MN
KROC-AM/FM Radio	Rochester	MN	
KXLP-FM/KYSM-AM/FM Radio	New Ulm	MN	
KTOE-AM/KDOG-FM Radio	Mankato	MN	
KRFO-AM/FM	Owatonna	MN	
Winona Radio	Winona		MN
KMHL Broadcasting	Marshall	MN	
KLGR-AM/FM Radio	Redwood Falls	MN	
KDMA-AM Radio	Montevideo	MN	
KKRC-FM Radio	Granite Falls	MN	
KLCD-FM Radio	Rochester	MN	
KOLM-AM/KWWK Radio	Rochester	MN	
KRCH-FM/KMFX-AM/FM Radio	Rochester	MN	
KMSU-FM Radio	Mankato	MN	
KOWZ-FM Radio	Owatonna	MN	
Winona State University Radio	Winona	MN	
KFSI-FM Radio	Rochester	MN	
KLOH-AM Radio	Pipestone	MN	
KWNG-FM/KCUE Radio	Red Wing	MN	
KIKC-AM Radio	Forsyth	MT	
KURL-AM Radio	Billings	MT	
KBBB Radio	Billings	MT	
KMHK-FM Radio	Billings	MT	
KBLG-AM/KYYA-FM/KCMT-FM	Billings	MT	

Media Source	City	State
KVCK-AM/FM Radio	Wold Point	MT
KMTA-AM Radio	Miles City	MT
KBTO-FM Radio	Bottineau	ND
KEYA-FM Radio	Belcourt	ND
KMHA-FM Radio	New Town	ND
KDLR-AM Radio	Devils Lake	ND
KZZY-FM Radio	Devils Lake	ND
KRPT-FM Radio	Anadarko	OK
KSPI-AM/FM/KGFY-FM Radio	Stillwater	OK
KXXY-FM Radio	Oklahoma City	OK
KEBC-AM Radio	Oklahoma City	OK
KKRX-AM Radio	Lawton	OK
KLAW/KZCD-FM Radio	Lawton	OK
KBZQ-FM Radio	Lawton	OK
KMGZ-FM Radio	Lawton	OK
KCCU-FM Radio	Lawton	OK
KUSH-AM Radio	Cushing	OK
KREK-FM Radio	Bristow	OK
KLMP/KSLT-FM Radio	Rapid City	SD
KIQK-FM Radio	Rapid City	SD
KTOQ-AM Radio	Rapid City	SD
KKLS-AM/KKMK-FM Radio	Rapid City	SD
KFXS/KOUT/KIMM Radio	Rapid City	SD
KESD-FM Public Radio	Brookings	SD
KBRK-AM/FM Radio	Brookings	SD
KJJQ-AM Radio	Brookings	SD
KCCR-AM/KLXS-FM Radio	Pierre	SD
KMLO-FM Radio	Pierre	SD
KPLO-FM/KGFX-AM/FM Radio	Pierre	SD
KSOB-FM Radio	Sioux Falls	SD
KOTA-TV/KOTA-AM Radio	Rapid City	SD
KOKK-AM/KZKK-FM Radio	Huron	SD
KIJV-AM/KZNC-FM Radio	Huron	SD
KYNT-AM/KKYA-FM Radio	Yankton	SD
KTSD-FM Radio	Vermillion	SD
KBHE-TV/FM Radio	Rapid City	SD
South Dakota State University Radio	Brookings	SD
South Dakota Public Radio	Brookings	SD
KZMX-AM/FM Radio	Hot Springs	SD
KINI-FM Radio	St. Francis	SD
KLND-FM Radio	McLaughlin	SD
KOLY-AM Radio	Mobridge	SD
KILI-FM Radio	Porcupine	SD

Media Source	City	State
WWIS-AM/FM Radio	Black River Falls	WI
KUWS-FM Public Radio	Superior	WI
WOWN-FM Radio	Shawano	WI
WRVM-FM Radio	Suring	WI
KWYY-FM Radio	Casper	WY
KTWO-AM Radio	Casper	WY
KKTY-AM/FM Radio	Douglas	WY
KRRR-FM Radio	Cheyenne	WY
KUWR Wyoming Public Radio	Laramie	WY
KOVE-AM/KDLY-FM Radio	Lander	WY
KMGW-FM	Casper	WY
KASS-FM Radio	Casper	WY
KVOW-AM/KTAK-FM Radio	Riverton	WY
KTRZ-FM Radio	Riverton	WY

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PROJECT MILESTONES

February 20, 1998

DM&E files application with the Surface Transportation Board (STB)

March 11, 1998

STB releases Notice of Construction and Operation Application and Request for Comments on Procedural Schedule

March 30, 1998

STB releases Notice of Intent to Prepare an EIS, Request for Comments on Proposed EIS Scope, and Notice of Scoping Meetings

June 10, 1998

STB releases Notice of Availability for Draft Scope of Study for EIS and Request for Comments

August 7, 1998

STB releases Amended Notice of Intent to Prepare an EIS; Extension of Request for Comments on Draft EIS Scope (Identifies Cooperating Agencies)

December 10, 1998

STB finds that DM&E's Application Satisfies Transportation-related Requirements of 49 U.S.C. 10901

March 10, 1999

STB and Cooperating Agencies release Notice of Availability of Final Scope of Study for the EIS; Request for Comments on Alternative C; and the City of Rochester's South Bypass Proposal

April 20, 1999

STB and Cooperating Agencies release Notice to Parties providing an opportunity to submit bypass proposals

Summer/Fall 1999

STB and Cooperating Agencies developing technical analysis and Draft EIS

SURFACE TRANSPORTATION BOARD

SECTION OF ENVIRONMENTAL ANALYSIS

PROPOSED POWDER RIVER BASIN EXPANSION PROJECT

Project Update

December 1999

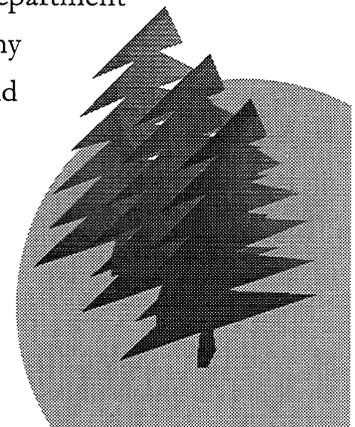
OVERVIEW

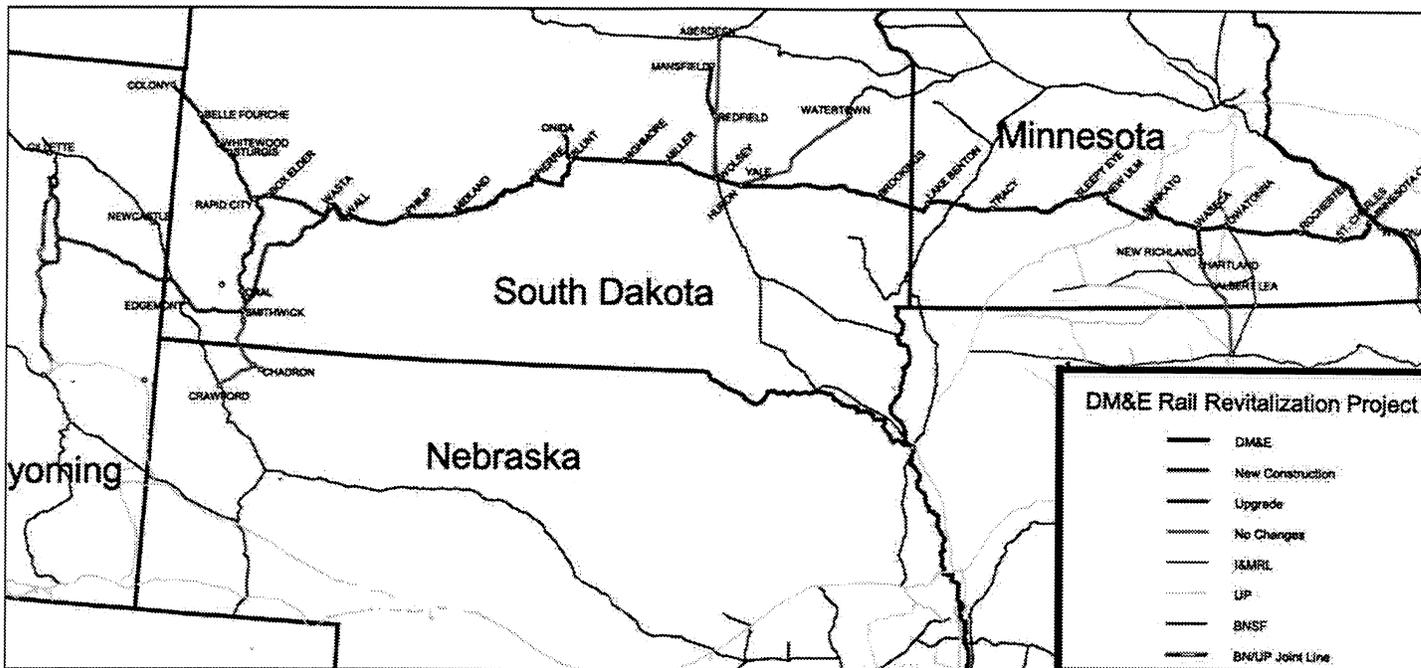
On February 20, 1998, the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) filed an application with the Surface Transportation Board (Board) for authority to construct and operate new rail line facilities in east-central Wyoming, southwest South Dakota, and south-central Minnesota. The project involves constructing approximately 300 miles of new rail line and rebuilding approximately 600 miles of existing rail line. Approval of this project would allow DM&E to transport low sulfur coal from Wyoming's Powder River Basin. Because

the construction and operation of this project could result in significant environmental impacts, the Board's Section of Environmental Analysis (SEA) is preparing an Environmental Impact Statement (EIS). As part of the EIS process, SEA has held agency and public scoping workshops in 14 cities located throughout the project area. In addition, SEA has consulted with and received comments from Federal, state and local agencies, tribes and members of the public. SEA will consider all these comments in preparing the EIS.

THE ROLE OF THE SURFACE TRANSPORTATION BOARD AND COOPERATING AGENCIES

The Board is responsible for regulatory proposals to construct and operate rail lines. SEA is responsible for conducting an environmental review under the National Environmental Policy Act (NEPA) and related environmental statutes on behalf of the Board. The NEPA environmental review process is intended to assist the Board, its cooperating agencies, and the public in identifying and assessing the potential environmental consequences of a proposed action before final decisions are made. Therefore, SEA is supervising the preparation of the EIS. The Board is the lead agency. The U.S. Department of Agriculture Forest Service (USFS), the U.S. Department of Interior Bureau of Land Management (BLM), the U.S. Army Corps of Engineers (COE), the U.S. Coast Guard (USCG), and the U.S. Bureau of Reclamation (USBR) are cooperating agencies and are working with SEA to complete the EIS process. Each cooperating agency will make a decision relative to its authority based on the EIS. SEA and the cooperating agencies are working together to ensure a thorough environmental analysis under NEPA.





FOR REPRESENTATION PURPOSES ONLY. MAP NOT TO SCALE.

WHAT'S COMING...

SEA and the cooperating agencies currently are preparing the Draft EIS, which will address the potential environmental impacts of project-related activities identified during the public scoping process for the following issue areas:

- safety
- noise
- air quality
- environmental justice
- cultural and historic resources
- biological resources
- hazardous materials
- socioeconomics
- water resources
- energy resources
- transportation systems
- cumulative effects
- recreation
- land use
- geology & soils
- aesthetics

The Draft EIS will also discuss alternative routes and feasible and reasonable bypass proposals and will contain recommended environmental mitigation measures. **Upon its completion, SEA and the cooperating agencies will make the Draft EIS available for public review and comment, at which time interested parties will have at least 45 days to submit comments.**

A Final EIS will then be prepared, reflecting the public comments made on the Draft EIS and further analysis as warranted. In reaching their final decisions in this case, the Board and each cooperating agency will take into account the full environmental record, including the Draft EIS, the Final EIS, and all public and agency comments received.

QUESTIONS/COMMENTS...

If you have questions or comments or would like to request maps of the project area, you may call the Board's environmental hotline at 1-877-404-3044, or write to the address listed below. Maps will be contained in the Draft EIS. However, in response to requests from the public some maps are being made available in advance of the Draft EIS for a fee. **Please note the available maps are preliminary and may change.**

OFFICE OF THE SECRETARY
CASE CONTROL UNIT
STB FINANCE DOCKET No. 33407
SURFACE TRANSPORTATION BOARD
1925 K STREET, NW
WASHINGTON, DC 20423-0001

To ensure proper handling, please mark your submission:

ATTENTION: ELAINE K. KAISER
CHIEF, SECTION OF ENVIRONMENTAL ANALYSIS
ENVIRONMENTAL FILING



**Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001**

NEWS

FOR RELEASE:
Thursday, July 1, 1999
No. 99-31

Contact: Dennis Watson
(202) 565-1596
TDD/TDY 1 (800) 877-8339
www.stb.dot.gov

SURFACE TRANSPORTATION BOARD SUMMARIZES STATUS OF ENVIRONMENTAL REVIEW PROCESS FOR "DM&E" RAILROAD CONSTRUCTION PROPOSAL

Surface Transportation Board (Board) Chairman Linda J. Morgan today summarized the status of the Board's environmental review process concerning the Dakota, Minnesota & Eastern Railroad's (DM&E) proposed rail line construction into Wyoming's Powder River Basin. Chairman Morgan stated that the Board, through its Section of Environmental Analysis (SEA), has the goal of completing the environmental review as soon as possible and that the agency is committed to doing its utmost to that end. In view of the number of environmental issues that have, and continue to be, raised in this complex case, and the number of public and community comments that have been submitted, a schedule for the completion of the environmental review process has not been established, as certain interested parties have suggested. The Board, through SEA, will continue to conduct its review as necessary to comply with its responsibilities under the environmental laws.

Nevertheless, the environmental review process is actively moving forward in a timely manner. Under the National Environmental Policy Act (NEPA), SEA issued a Notice of Intent

to Prepare an Environmental Impact Statement (EIS) on March 30, 1998. SEA issued an Amended Notice of Intent on August 7, 1998, announcing the addition of three cooperating agencies, the Forest Service of the U.S. Department of Agriculture, the U.S. Department of Interior Bureau of Land Management, and the U.S. Army Corps of Engineers. In addition to conducting 14 scoping meetings throughout Minnesota, South Dakota, and Wyoming, SEA issued a Draft Scope of Study for the EIS on June 10, 1998, and a Final Scope of Study on March 10, 1999. SEA and the three cooperating agencies are now preparing a Draft EIS to address potential environmental impacts of DM&E's proposal.

Working with the cooperating agencies, and in accordance with the Board's responsibilities under the environmental laws, SEA has conducted biological surveys for threatened and endangered species and cultural resource surveys for archaeological sites and historic structures. SEA additionally initiated government-to-government consultation with more than 20 Indian tribes, and is gathering extensive data on air quality, grade crossing safety and potential delays, railroad and vehicular traffic volumes, wetlands and aquatic resources, noise receptors, wildlife migration, and potential impacts to ranching operations. SEA's analysis of these data will be included in its forthcoming Draft EIS, which also will contain environmental mitigation recommendations.

In addition to its consultations and technical analyses, the Board has received approximately 4,000 comments from individuals, agencies, tribes, and communities raising concerns about the proposed project that must be considered and assessed, with the attendant potential to delay completion of the Draft EIS. For example, on January 6, 1999, the City of Rochester, Minnesota (Rochester), requested that SEA consider a southern bypass corridor as an alternative to DM&E's proposed plan to rehabilitate its existing rail line and operate additional rail traffic, primarily coal trains, through Rochester. SEA sought additional information to assist it in determining whether Rochester's bypass proposal is a reasonable and feasible alternative designed to meet the purpose and need expressed in DM&E's proposal before the Board. To provide the same opportunity to other interested communities, SEA issued an April 20, 1999 Notice to the Parties providing time frames in which bypass proposals could be submitted, as certain communities had requested.

Three other communities (Owatonna, MN and Pierre and Brookings, SD) concerned about proposed traffic increases on DM&E's existing system submitted alternative bypass proposals that would divert traffic from the communities. Comments from DM&E and others who may be affected by a possible bypass must be submitted to the Board by **July 12, 1999**. Once those comments are received, SEA and the cooperating agencies will review the bypass proposals to determine what alternatives to DM&E's proposal are reasonable and feasible, as required by NEPA. Those alternatives will be discussed in the Draft EIS.

After SEA and the cooperating agencies have issued the Draft EIS, NEPA guidelines require a minimum of 45 days for interested parties to review and submit comments on all aspects of the Draft EIS. Any comments submitted will be made part of the environmental record in this case and must be responded to in the Final EIS, which also will contain further technical analysis, if warranted, and final environmental mitigation recommendations. After the

completion of the environmental review process, the Board will issue its final decision in this case.¹ That decision will address DM&E's **entire proposal** and will assess potential environmental effects. Even if approved, DM&E may not begin construction until the Board's final decision has been issued and has become effective.

The Powder River Basin Project is DM&E's proposal to construct approximately 280 miles of new rail line in South Dakota and Wyoming and to upgrade approximately 600 miles of existing rail line in South Dakota and Minnesota. The project would allow DM&E to extend its existing system westward to access coal mines in the Powder River Basin.

The decisions discussed above were issued in *Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin*, STB Finance Docket No. 33407. Copies are available for a fee by contacting: **D.C. News & Data, Inc., Room 210, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 463-8112**. The decisions are available for viewing and downloading via the Board's website at **www.stb.dot.gov**.

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¹ On December 10, 1998, the Board issued a decision finding that, based on the information available to date, DM&E's construction application satisfied the **transportation-related requirements** of 49 U.S.C. 10901. In this first decision, the Board stated that it had addressed **only the transportation aspects** of DM&E's proposed project. The Board made clear that it would consider the **environmental aspects** after the completion of the environmental review process.



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Section of Environmental Analysis

April 20, 1999

Re: Finance Docket No. 33407 -- Dakota, Minnesota & Eastern Railroad Corporation --
Proposed Construction into the Powder River Basin: Extension of Comment Period for
Final Scope of Study for the Environmental Impact Statement

Dear Reference Librarian:

On March 10, 1999, the Federal Surface Transportation Board's (Board) Section of Environmental Analysis, in conjunction with the U.S. Forest Service, U.S. Department of Interior - Bureau of Land Management, and U.S. Army Corps of Engineers, known collectively as the agencies, issued the Final Scope of Study for the Environmental Impact Statement (EIS) concerning the Dakota, Minnesota, and Eastern Railroad's proposed construction into the Powder River Basin. The Final Scope provided a 30-day comment period to allow interested parties to make comments on: 1) the Modified Proposed Action, referred to as Alternative C, and 2) the City of Rochester, Minnesota's South Bypass Proposal. Public comments on the Final Scope were to be submitted by April 10, 1999.

Enclosed please find the Board's Decision served on April 20, 1999 that extends the comment period on the Final Scope for an additional 60 days, or until June 10, 1999. Replies or responses must be submitted by July 12, 1999.

The agencies request that your library place this Decision with the Final Scope of Study, which was sent to you on March 10, 1999, in a reference or other appropriate section to allow for public access and review. Please keep this material available until July 12, 1999.

Thank you for your assistance in this matter. Should you have any questions or comments, please call SEA's toll-free Environmental Hotline at 1-877-404-3044 and leave a message. Someone will return your call promptly.

Sincerely yours,

Elaine K. Kaiser
Environmental Project Director
Section of Environmental Analysis



Enclosure



*Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001*

NEWS

FOR RELEASE:
Tuesday, April 20, 1999
No. 99-16

Contact: Dennis Watson
(202) 565-1596
TDD/TDY 1 (800) 877-8339
www.stb.dot.gov

SURFACE TRANSPORTATION BOARD EXTENDS TIME FOR COMMUNITIES TO SUBMIT BYPASS ALTERNATIVES IN PROPOSED DAKOTA, MINNESOTA & EASTERN RAIL LINE CONSTRUCTION & OPERATION CASE

The Surface Transportation Board (Board) announced today in a Notice to the Parties (Notice) that its Section of Environmental Analysis (SEA) is providing a limited, additional comment period for interested communities to develop specific bypass proposals that may be reasonable routing alternatives to the Dakota, Minnesota & Eastern Railroad's (DM&E) proposed rail line construction into Wyoming's Powder River Basin. Comments containing specific bypass designs must be filed by **June 10, 1999**. DM&E and any interested party or person who may be affected by a proposed bypass then will have until **July 12, 1999** to respond. This additional comment period is not a substitute for the comment period that will be provided on all aspects of the Draft Environmental Impact Statement (DEIS) when that document is issued.

In the Final Scope of Study for the Environmental Impact Statement issued March 10, 1999 (Final Scope), SEA made a preliminary determination, based on submissions by the City of Rochester, Minnesota (City), that the City had met an initial burden of showing that its south bypass proposal may be a feasible routing alternative. The additional comment period will

afford other interested communities the same opportunity to submit specific bypass designs.

The Notice issued today specifies that information received from any community regarding a bypass must be detailed enough for the Board and the cooperating agencies to determine whether a specific bypass proposal constitutes a reasonable and feasible alternative to DM&E's proposal, or merely shifts the potential environmental consequences of DM&E's proposed action to different areas. The type of information that should be submitted includes detailed maps showing where the proposed bypass route would be located; quantified impacts to wetlands; cut and fill requirements to permit design and operation of a railroad; roads that would be crossed and their average daily traffic levels; proximity of the bypass to sensitive structures (for example, schools, libraries, hospitals, residences, retirement communities, and nursing homes); and impacts to landowners and farmlands.

The Notice states that, in considering bypass proposals that may be submitted and in determining whether they constitute reasonable, feasible alternatives, DM&E's goal to create a more efficient route by which to transport coal will be taken into account. Also, the Notice provides that parties may use the additional time to submit comments on other alternatives described in the Final Scope. Finally, the Notice makes clear that, to ensure timely issuance of the DEIS, no further extensions of time would be granted.

A DEIS addressing all environmental issues, including alternatives, and containing recommended mitigation will be made available for public review and comment. A Final Environmental Impact Statement (FEIS) will then be prepared reflecting further analysis and the comments received on the DEIS. In reaching their future decisions in this case, the Board and the cooperating agencies will take into account the full environmental record, including the DEIS, the FEIS, and all public and agency comments received.

The Powder River Basin Project is DM&E's proposal to construct approximately 280 miles of new rail line in South Dakota and Wyoming and to upgrade approximately 600 miles of existing rail line in South Dakota and Minnesota. The project would allow DM&E to extend its existing system westward to access coal mines in the Powder River Basin of Wyoming. On June 10, 1998, SEA issued a Draft Scope of the EIS and provided a period for submission of written comments on it. The Final Scope was issued March 10, 1999. On December 10, 1998, the Board issued a decision finding that DM&E's application had satisfied the transportation-related requirements of Section 10901 of Title 49, United States Code (49 U.S.C. 10901) and stated that it would issue a subsequent decision on the entire proposed project after completion of the environmental review process. All of these decisions were issued in the case entitled *Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin*, STB Finance Docket No. 33407. Today's Notice likewise was issued in Finance Docket No. 33407.

Written comments regarding alternatives must be submitted by **June 10, 1999**. Reply comments are due **July 12, 1999**. For further information on how to file comments on alternatives, please telephone the Board's toll-free environmental hotline at **1-877-404-3044**.

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[Federal Register: April 20, 1999 (Volume 64, Number 75)]
 [Notices]
 [Page 19407-19408]
 From the Federal Register Online via GPO Access [wais.access.gpo.gov]
 [DOCID:fr20ap99-128]

 DEPARTMENT OF TRANSPORTATION

Surface Transportation Board
 [STB Finance Docket No. 33407]

Dakota, Minnesota & Eastern Railroad Corporation Construction
 Into The Powder River Basin

AGENCIES: Lead: Surface Transportation Board.

Cooperating:

U.S.D.A. Forest Service.
 U.S.D.I. Bureau of Land Management.
 U.S. Army Corps of Engineers.

ACTION: Notice to the parties providing an extension of time to submit
 comments on alternatives and reply comments.

 On March 10, 1999, the Final Scope of Study for the Environmental
 Impact Statement (EIS) and Request for Comments on 1) the Modified
 Proposed Action, referred to as Alternative C, and 2) the City of
 Rochester, Minnesota's South Bypass Proposal was issued in this
 proceeding. The Final Scope provided a 30 day comment period for
 interested parties to submit comments on the two new proposed
 alternatives listed above, while making it clear that the 30 day
 comment period, which was due to expire on April 10, 1999, was in
 addition to, not a substitute for, the comment period that will be
 provided on all aspects of the Draft Environmental Impact Statement
 (DEIS) when that document is made available.

The Board and cooperating agencies have received requests to extend
 the April 10, 1999 comment date. Some of the requests seek an extension
 in which to comment on a number of potential environmental impacts and
 others seek additional time to permit development of bypass alternative
 proposals.

As discussed below, we will provide a limited additional comment
 period for interested communities to develop bypass proposals. As we
 stated in the Final Scope, we are mindful of our obligations under the
 National Environmental Policy Act, 16 U.S.C. 4321-4335 (NEPA) to
 explore and evaluate in the EIS a reasonable range of alternatives
 designed to meet the purpose and need of the applicant's proposal.
 Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190 (D.C. Cir.
 1991). At the same time, we are aware that we cannot let the
 environmental review process indefinitely delay the Board's final
 decision on this matter.

In the Final Scope, we made a preliminary determination, based on
 the City of Rochester's engineering study and cost estimates, that the
 City had met an initial burden of showing that its

[[Page 19408]]

proposed south bypass may be a feasible routing alternative.
 Accordingly, we requested comments from the railroad and other
 concerned parties on whether the south bypass proposal was feasible, or
 would simply shift the potential environmental consequences of the
 applicant's proposal to different communities and populations. Having
 provided this opportunity in Rochester, we believe that we should

afford other interested communities the same opportunity to submit specific bypass designs.

Therefore, we will extend the comment period established in the Final Scope for an additional 60 days, or until June 10, 1999, to provide time for any other interested community to submit a bypass proposal. Dakota, Minnesota & Eastern Railroad or any interested party or person who may be affected by a proposed bypass would then have 30 days, or until July 12, 1999, to respond. In addition, parties may use the additional time to submit comments on other alternatives described in the Final Scope.

We note that the information we receive from any community regarding a bypass must be detailed enough for us to determine whether a specific bypass proposal constitutes a reasonable and feasible alternative to the applicant's proposal or merely relocates the potential environmental consequences of the applicant's proposed action. To that end, any bypass proposal submitted by a community must, at a minimum, contain the following information: detailed maps showing where the route would be located; quantified impacts to wetlands; cut and fill requirements to permit design and operation of a railroad; roads that would be crossed and their average daily traffic levels; proximity of the bypass any sensitive structures (for example, schools, libraries, hospitals, residences, retirement communities, and nursing homes); and impacts to landowners and farmlands.

Also, in considering bypass proposals that may be submitted to the Board and determining whether they constitute reasonable, feasible alternatives, we will take into account the applicant's goal to create a more efficient route by which to transport coal. A circuitous route that bypasses numerous communities could add so many additional miles that it would be unlikely to allow applicant to achieve its goal of providing efficient rail transportation. However, before arriving at a final decision on the range of alternatives to be addressed in the DEIS, we will carefully consider any specific bypass proposal and all responses to such a proposal.

Finally, we must balance our responsibility to analyze a reasonable range of alternatives with the need to move the environmental review process forward without undue delay. To allow us to issue the DEIS in a timely manner, we will not grant further extensions of time.

The requests for additional time to provide comments on potential environmental impacts will be denied. As the Board and its cooperating agencies stated in the Final Scope, we are in the process of preparing a DEIS analyzing all potential environmental effects discovered during the course of the environmental review process, including concerns identified during scoping. The DEIS will be made available upon its completion for public review and comment. Accordingly, there is no need to provide an additional comment period on potential environmental impacts at this point.

Bypass proposals and comments on alternatives described in the Final Scope must be submitted to the Board by June 10, 1999. Replies or responses must be submitted by July 12, 1999. Comments should be sent to: Office of the Secretary, Case Control Unit, STB Finance Docket No. 33407, Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423-0001.

To ensure proper handling of your comments, you must mark your submission:

Attention: Elaine K. Kaiser, Chief, Section of Environmental Analysis, Environmental Filing.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams,
Secretary.

[FR Doc. 99-9860 Filed 4-19-99; 8:45 am]
BILLING CODE 4915-00-P



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Section of Environmental Analysis

March 10, 1999

Re: Finance Docket No. 33407 -- Dakota, Minnesota & Eastern Railroad Corporation --
Proposed Construction into the Powder River Basin: Final Scope of Study for the
Environmental Impact Statement

Dear Study Participant:

The Surface Transportation Board's Section of Environmental Analysis (SEA) is pleased to provide you with the enclosed Final Scope of Study for the Environmental Impact Statement (EIS) regarding the Dakota, Minnesota & Eastern Railroad Corporation's (DM&E) proposed rail line construction and operation to coal mines in Wyoming's Powder River Basin. Working with its cooperating agencies (the U.S. Department of Agriculture's Forest Service, the U.S. Department of Interior's Bureau of Land Management, and the U.S. Army Corps of Engineers), SEA is issuing the final scope as part of the environmental review process under the National Environmental Policy Act (NEPA).

The final scope reflects issues raised both orally and in writing by agencies and the public during numerous scoping meetings held in Minnesota, South Dakota, and Wyoming. The final scope also takes into account all comments received on environmental issues concerning DM&E's proposal.

In addition to issuing the final scope of the EIS, the Board and the cooperating agencies are providing a 30 day comment period for interested parties to submit comments on two new proposed alternatives: 1) a Modified Proposed Action, referred to as Alternative C, and 2) the City of Rochester's South Bypass Proposal. This comment period is in addition to the comment period that will be provided on all aspects of the Draft EIS (DEIS) when that document is made available.

The next major step in the environmental review process is issuance of a DEIS, as mentioned above. The DEIS, addressing all environmental issues and containing recommended mitigation, will be made available for public review and comment. A Final EIS (FEIS) will then be prepared reflecting further analysis and the comments on the DEIS. In reaching their future decisions in this case, the Board and each cooperating agency will take into account the full environmental record, including the DEIS, the FEIS, and all public and agency comments received.

If you would like additional information about the environmental review process, please call the toll-free environmental hotline at 1-877-404-3044. All Board decisions, including this final scope, may be found on the Board's website at www.stb.dot.gov.

Thank you for your interest and participation in the NEPA process.

Sincerely yours,

A handwritten signature in cursive script that reads "Elaine K. Kaiser".

Elaine K. Kaiser
Environmental Project Director
Section of Environmental Analysis

Enclosure



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Section of Environmental Analysis

March 10, 1999

Re: Finance Docket No. 33407 -- Dakota, Minnesota & Eastern Railroad Corporation --
Proposed Construction into the Powder River Basin: Final Scope of Study for the
Environmental Impact Statement

Dear Reference Librarian:

Enclosed please find the Final Scope of Study for the Environmental Impact Statement (EIS) concerning the Dakota, Minnesota, and Eastern Railroad's proposed construction into the Powder River Basin. The Final Scope has been prepared by the Federal Surface Transportation Board's (Board) Section of Environmental Analysis (SEA) in conjunction with the U.S. Forest Service, U.S. Department of Interior - Bureau of Land Management, and U.S. Army Corps of Engineers, known collectively as the agencies.

The agencies are asking that your library place this Final Scope of Study in a reference or other appropriate section to allow for public access and review. Please keep this material available until May 10, 1999.

This Final Scope identifies all environmental issue areas that will be evaluated by the agencies in the Draft EIS. The issue areas include safety, transportation, air quality, noise, historic and cultural resources (including American Indian Tribal issues), energy, water resources, biological resources, hazardous materials transport, land use (including utilities and grazing), environmental justice, and cumulative effects.

Thank you for your assistance in this matter. Should you have any questions or comments, please call SEA's toll-free Environmental Hotline at 1-877-404-3044 and leave a message. Someone will return your call promptly.

Sincerely yours,

Elaine K. Kaiser
Environmental Project Director
Section of Environmental Analysis

Enclosure

LEGAL NOTICE
Final Scope of Study for the
Environmental Impact Statement for the
Dakota, Minnesota, and Eastern Railroad's Powder River Basin
Expansion Project

The Surface Transportation Board, U.S. Forest Service, U.S. Department of Interior – Bureau of Land Management, and the U.S. Army Corps of Engineers, known collectively as the agencies, have made available the Final Scope of Study for the Environmental Impact Statement (EIS); Request for Comments on the Modified Proposed Action, referred to as Alternative C, and the City of Rochester's South Bypass Proposal. The EIS will include analysis of possible environmental effects of the proposed action and alternatives on land use (including utilities and grazing), biological resources, water resources, geology and soils, air quality, noise, energy resources, socioeconomics, safety, hazardous materials, transportation systems, cultural and historic resources, recreation, visual quality, environmental justice, and cumulative effects. The proposed action would include changes in railroad operations, an increase in train traffic on rail lines, construction of 280.9 miles of new rail line, and rebuild of 597.8 miles of rail line. States affected include Minnesota, South Dakota, and Wyoming.

If you have questions regarding the environmental issues or environmental review process, or would like a copy of the Final Scope of Study for the EIS, please contact the agencies Environmental Hotline at 1-877-404-3044. The public may submit comments regarding the potential environmental effects on the Modified Proposed Action, referred to as Alternative C, and the City of Rochester's South Bypass Proposal. Please submit comments within 30 days of publication of the Final Scope and request for comments in the Federal Register to the following address:

Office of the Secretary
Case Control Unit
Finance Docket No. 33407
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001
Attention: Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing.

DAKOTA, MINNESOTA & EASTERN RAILROAD
CONSTRUCTION AND OPERATION PROPOSAL

FINAL SCOPE OF STUDY FOR THE ENVIRONMENTAL IMPACT STATEMENT

A Legal Notice announcing the issuance and availability of the Final Scope of Study for the Environmental Impact Statement was faxed to the following media on March 10, 1999:

Media Source	City	State
The News Record	Los Angeles	CA
Rocky Mountain News	Denver	CO
Denver Post	Denver	CO
Maywood Herald	Maywood	IL
Janesville Argus	Janesville	MN
Balaton Press Tribune	Balaton	MN
Dodge County Independent Newspaper	Kasson	MN
The Elysian Enterprise	Elysian	MN
Hastings Star Gazette	Hastings	MN
The Hanska Herald	Hanska	MN
The Hot Springs Star	Hot Spring	MN
Independent	Marshall	MN
Aitkin Independent	Aitkin	MN
Blooming Prairie News	Blooming Prairie	MN
New Ulm Journal	New Ulm	MN
Lafayette-Nicollett Ledger	Lafayette	MN
Lake Region Life	Waterville	MN
Lake Region Times	Madison Lake	MN
Lamberton News	Lamberton	MN
Leader	Le Center	MN
Montgomery Messenger	Montgomery	MN
Minneapolis Star- Tribune	Minneapolis	MN
New Prague Times	New Prague	MN
Star	Stewartville	MN
Northern Star	Clinton	MN
Mountain Lake Observer	Mountain Lake	MN
People's Press	Owatonna	MN
Pope County Tribune	Glenwood	MN
The Echo	Alexandria	MN
Redwood Gazette	Redwood Falls	MN
Post-Bulletin	Rochester	MN
Roseau Times-Region	Roseau	MN
Sleepy Eye Herald	Sleepy Eye	MN
St. James Plaindealer	St. James	MN

Media Source	City	State
St. Paul Pioneer Press	St. Paul	MN
Star-Farmer	Renville	MN
Star-Record	Dodge Center	MN
The Edgerton Enterprise	Edgerton	MN
Ivanhoe Times	Ivanhoe	MN
Le Sueur News-Herald	Le Center	MN
Valley Publications	Wabasha	MN
West Central Tribune	Willmar	MN
Winona Daily News	Winona	MN
Winona Post	Winona	MN
Messenger	Morgan	MN
Worthington Daily	Worthington	MN
Tracy Headlight	Tracy	MN
Lewiston Journal	Lewiston	MN
Laramie Boomerang	Laramie	MN
Morris Tribune	Morris	MN
Pioneer Press	St. Paul	MN
Mapleton River Messenger	Mapleton	MN
St. Peter Herald	St. Peter	MN
Okasis Review	Alexandria	MN
Springfield Advance	Springfield	MN
Comfrey Times	Comfrey	MN
Omaha World-Herald	Omaha	NE
Kadoka Press	Kadoka	SD
Custer County Chronicle	Custer	SD
Huron Plainsman	Huron	SD
The Brookings Register	Brookings	SD
The Capital Journal	Pierre	SD
Rapid City Journal	Rapid City	SD
Argus Leader	Sioux Falls	SD
Byron Review	Byron	SD
Berlin Journal	Berlin	WY
Newsletter Journal	Newcastle	WY
Wyoming Eagle Tribune	Cheyenne	WY
The Douglas Budget	Douglas	WY
Casper Journal	Casper	WY
Casper Star-Tribune	Casper	WY

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SEA

SERVICE DATE - MARCH 10, 1999

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33407

Dakota, Minnesota & Eastern Railroad Corporation
Construction Into the Powder River Basin¹

Decided: March 5, 1999

Agencies: Lead: Surface Transportation Board.
 Cooperating: U.S.D.A. Forest Service.
 U.S.D.I. Bureau of Land Management.
 U.S. Army Corps of Engineers.

Action: Notice of Availability of Final Scope of Study for the Environmental Impact Statement (EIS); Request for Comments on 1) the Modified Proposed Action, referred to as Alternative C, and 2) the City of Rochester, Minnesota's South Bypass Proposal.

Summary: On February 20, 1998, the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) filed an application with the Surface Transportation Board (Board) for authority to construct and operate new rail line facilities in east-central Wyoming, southwest South Dakota, and south-central Minnesota. The project involves construction of new rail line totaling 280.9 miles. Additionally, DM&E proposes to rebuild 597.8 miles of existing rail line along its current system to standards acceptable for operation of unit coal trains. Because the construction and operation of this project has the potential to result in significant environmental impact, the Board's Section of Environmental Analysis (SEA) determined that the preparation of an Environmental Impact Statement (EIS) is appropriate. SEA held 3 agency and 12 public scoping workshops in 14 cities as part of the EIS scoping process, as discussed in the Notice of Intent to Prepare an EIS, Request for Comments on the Proposed EIS Scope, and Notice of Scoping Meetings published by the Board on March 27, 1998. Because of public interest in the project, workshops in Newcastle, Wyoming and Winona, Minnesota, not originally scheduled, were added to provide additional opportunities for public participation in the scoping process. Comment forms and the draft scope of study (draft scope) were provided to workshop attendees. On August 7, 1998, the Board published a Revised

¹This case was formerly entitled Dakota, Minnesota & Eastern Railroad Corporation -- Construction and Operation -- in Campbell, Converse, Niobrara, and Weston Counties, WY, Custer, Fall River, Jackson, and Pennington Counties, SD, and Blue Earth, Nicollet, and Steele Counties, MN. By decision served May 7, 1998, the Surface Transportation Board shortened the title for the sake of simplicity. As discussed below, the environmental review of this project will also include the section of the line DM&E proposes to rebuild as part of this project. Environmental review of the rebuild portion of the line would include the counties of Winona, Olmsted, Dodge, Steele, Waseca, Blue Earth, Brown, Redwood, Lincoln, and Lyon in Minnesota; Brookings, Kingsbury, Beadle, Hand, Hyde, Hughes, Stanley, Haakon, Jackson, Pennington, and Fall River in South Dakota.

Notice of Intent to Prepare an EIS, indicating that the U.S.D.A. Forest Service, U.S.D.I. Bureau of Land Management, and the U.S. Army Corps of Engineers would be participating as cooperating agencies. The scoping comment period, originally scheduled to conclude on July 10, 1998, was extended until September 8, 1998. However, comments filed after September 8, 1998 have been accepted and considered in this final scope of study (final scope) of the EIS. Changes made to the draft scope are detailed in the Response to Comments section of this notice.

In addition to issuing the final scope of the EIS, the Board and the cooperating agencies are providing a 30 day comment period for interested parties to submit comments on two new proposed alternatives: 1) the Modified Proposed Action, referred to as Alternative C, and 2) the City of Rochester, Minnesota's South Bypass Proposal. Both these new alternatives are discussed in detail below, along with information on how to submit written comments. This 30 day comment period is in addition to the comment period that will be provided on all aspects of the Draft EIS (DEIS) when that document is made available.

For Further Information Contact:

Ms. Victoria Rutson, SEA Project Manager, Powder River Basin Expansion Project, toll free at 1-877-404-3044.

Mr. Steve Thornhill of Burns & McDonnell, SEA's third party contractor, at (816) 822-3851.

Ms. Wendy Schmitzer, U.S.D.A. Forest Service, (307) 358-4690.

Mr. Bill Carson, U.S.D.I. Bureau of Land Management, (307) 746-4453.

Mr. Jerry Folkers, U.S. Army Corps of Engineers, (402) 221-4173.

SUPPLEMENTARY INFORMATION

Background: The proposed action, referred to as the Powder River Basin Expansion Project, would involve the construction and operation of 280.9 miles of new rail line and the rebuilding of 597.8 miles of existing rail line by DM&E, as described in the February 20, 1998 application for construction and operation authority for the project filed by DM&E and in the March 27, 1998 Notice of Intent to Prepare an EIS published in the Federal Register by the Board.

The Powder River Basin Expansion Project, as set forth by DM&E in its application filed with the Board, would involve the construction and operation of new rail facilities designed to provide access for a third rail carrier to serve the Powder River Basin's coal mines for transport of coal eastward and increase the operational efficiency of DM&E. New rail construction would include approximately 262.03 miles of rail line extending off DM&E's existing system near Wasta,

South Dakota, extending generally southwesterly to Edgemont, South Dakota, and then westerly into Wyoming to connect with existing coal mines² located south of Gillette, Wyoming. This portion of the new construction would traverse portions of Custer, Fall River, and Pennington Counties, South Dakota and Campbell, Converse, Niobrara, and Weston Counties, Wyoming.

New rail construction would also include an approximate 13.31 mile line segment at Mankato, Minnesota, within Blue Earth and Nicollet Counties. DM&E currently operates over trackage on both sides of Mankato, accessed by trackage rights on rail line owned and operated by Union Pacific Railroad Company (UP). The proposed Mankato construction would provide DM&E direct access between its existing lines and avoid operational conflicts with UP.

The final proposed segment of new rail construction would involve a connection between the existing rail systems of DM&E and I&M Rail Link. The connection would include construction and operation of approximately 2.94 miles of new rail line near Owatonna, Steele County, Minnesota. The connection would allow interchange of rail traffic between the two carriers.

In order to transport coal over the existing system, DM&E proposes to rebuild approximately 597.8 miles of rail line along its existing system. The majority of this, approximately 584.95 miles, would be along DM&E's mainline between Wasta, South Dakota, and Winona, Minnesota. This rebuild would cross Winona, Olmsted, Dodge, Waseca, Brown, Redwood, Lincoln, and Lyons Counties, as well as Steele, Blue Earth, and Nicollet Counties in Minnesota, and Brookings, Kingsbury, Beadle, Hand, Hyde, Hughes, Stanley, Haakon, and Jackson Counties in South Dakota. An additional approximate 12.85 miles of existing rail line between Oral and Smithwick, in Fall River County, South Dakota, would also be rebuilt. Rail line rebuilding would include rail and tie replacement, additional sidings, signals, grade crossing improvements, and other systems.

DM&E plans to transport coal as its principal commodity. However, shippers desiring rail access could ship other commodities in addition to coal over DM&E's rail line. Existing shippers along the existing DM&E system would continue to receive rail service.

Environmental Review Process: The Board is the lead agency, pursuant to 40 CFR 1501.5(c). SEA is responsible for ensuring that the Board complies with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321-4335, and related environmental statutes. SEA will supervise the preparation of the EIS. The U.S. Department of Agriculture Forest Service (USFS), the U.S. Department of Interior Bureau of Land Management (BLM), and the U.S. Army Corps of Engineers (COE) are cooperating agencies, pursuant to 40 CFR 1501.6. If the cooperating agencies find the EIS adequate, they will base their respective decisions on it. The EIS should include all of the

²Caballo, Belle Ayr, Caballo Rojo, Cordero, Coal Creek, Jacobs Ranch, Black Thunder, North Rochelle, North Antelope, Rochelle, and Antelope.

information necessary for decisions by the Board, USFS, BLM, and COE (collectively, the agencies).

On December 10, 1998, the Board found that DM&E had satisfied the transportation-related requirements of 49 U.S.C. 10901. In issuing its decision, the Board stated that it had considered only the transportation aspects of DM&E's proposed project. Environmental aspects would be considered after the completion of the environmental review process. Therefore, the Board emphasized, no final decision would be issued until all statutory requirements — both transportation and environmental — were satisfied. Construction cannot begin until the cooperating agencies have issued their decisions and the Board has issued its final decision.

The NEPA environmental review process is intended to assist the agencies and the public to identify and assess the potential environmental consequences of a proposed action before a decision on the proposed action is made. The agencies have developed and made available a draft scope of the EIS and provided a period for submission of written comments on it. At this time, the agencies are issuing this final scope of the EIS. In addition, the agencies are requesting comments on two new proposed alternatives: 1) the Modified Proposed Action, referred to as Alternative C, and 2) the City of Rochester's South Bypass Proposal. This comment period is in addition to the comment period that will be provided on all aspects of the DEIS when that document is made available.

Specifically, DM&E has developed a Modified Proposed Action, referred to as Alternative C. This proposal includes an alternative alignment in Wyoming and South Dakota for the mainline extension developed by DM&E in response to environmental issues and concerns raised by agencies, local landowners, and other interested parties. The Board and the cooperating agencies are seeking views of all commenters in order to ensure public input in the assessment of potential environmental impacts of this alternative.

Also, the City of Rochester has submitted a South Bypass Proposal to construct a rail line that would route rail traffic south around that city. The Board and the cooperating agencies are seeking additional information to assist in determining whether the bypass proposal is a reasonable and feasible alternative designed to meet the purpose and need of the applicant's proposed action. The Board and the cooperating agencies will consider the comments in determining whether Rochester's South Bypass Proposal is a reasonable and feasible alternative and will set forth their conclusions in the DEIS.

As stated, the agencies will prepare a DEIS for the proposed project. The DEIS will address those environmental issues and concerns identified during the scoping process and detailed in the scope of study. It will also contain a reasonable range of alternatives to the proposed action and recommended environmental mitigation measures.

The DEIS will be made available upon its completion for public review and comment. A Final EIS (FEIS) will then be prepared reflecting the agencies' further analysis and the comments on

the DEIS. In reaching their future decisions in this case, the Board and each cooperating agency will take into account the full environmental record, including the DEIS, the FEIS, and all public and agency comments received.

Consistent with its jurisdiction under the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995), the Board would normally only conduct an environmental analysis of the new construction and the increase in operations over DM&E's existing system. However, in this instance, the EIS analysis will also address construction related impacts associated with the rebuilding of DM&E's existing mainline from the point of connection with the new construction segments between Wasta, South Dakota and Winona, Minnesota. Because the COE, which as discussed above is a cooperating agency, requires such analysis, construction related impacts along the rail line to be rebuilt, including sidings and yard facilities, will be analyzed in this EIS to the extent necessary to satisfy the COE's permitting requirements under the Clean Water Act.

Proposed Action and Alternatives: Based on analysis conducted to date and comments received during the scoping process, the agencies have determined that the reasonable and feasible alternatives³ that will be discussed in the EIS are:

A. South Dakota/Wyoming New Rail Line Extension

(1) the "No Action Alternative," referred to as Alternative A. This alternative to include the no build alternative as well as the no action on federal lands alternative.

(2) the "Proposed Action," referred to as Alternative B. This alternative includes DM&E's preferred alternative as identified in its application to the Board, but modified in response to operational constraints discovered near Wall, South Dakota.⁴

³ Under NEPA, an applicant's goals are important in defining the range of feasible alternatives. NEPA does not require discussion of an alternative that is not reasonably related to the purpose of the proposal considered by the agencies. Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190 (D.C. Cir. 1991). Here, the proposed project is intended to facilitate the delivery of coal from the Powder River Basin of Wyoming eastward by DM&E. During scoping, numerous comments were received suggesting that the EIS evaluate alternative energy sources, such as nuclear, hydroelectric and wind, as an alternative to burning of coal. These alternatives, while offering legitimate means of generating energy, do not advance the applicant's goals of efficiently transporting coal and upgrading its current rail system, and therefore, will not be evaluated in the EIS.

⁴DM&E noted in its application that modifications to the existing system near Wall would likely be required as part of the proposed project. However, no modifications were specifically

(continued...)

(3) the “Modified Proposed Action,” referred to as Alternative C. This alternative would include an alternative alignment in Wyoming and South Dakota for the mainline extension developed by DM&E in response to environmental issues and concerns raised by agencies, local landowners, and other interested parties. Alternative C is designed to minimize potential environmental impacts. This alignment was not developed until after DM&E filed its application with the Board and after scoping workshops had been held. Therefore, this alignment has not yet been presented publicly on a broad scale for review and comment.⁵ To facilitate public review and comment regarding this alternative, the agencies will provide an additional 30 day comment period. A general description of the alignment for this alternative, together with a map, is set forth below (see “Description of Alternative C, the Modified Proposed Action”). Copies of maps of this alignment may be obtained through written request to the Board or by contacting the toll-free environmental hotline at 1-877-404-3044.

(4) the “existing transportation corridors alternative,” referred to as Alternative D. This alternative includes:

- utilization of the existing DM&E line westward to Rapid City, then southward to Crawford, Nebraska, then northward parallel to the existing Burlington Northern Santa Fe Railway Company (BNSF) line to Donkey Creek Junction, then south to the joint BNSF/UP line (Joint Line), following

⁴(...continued)

indicated at the time DM&E filed its application with the Board. As a result of more detailed engineering, DM&E has since determined that grade and curve considerations at this location would be prohibitive for the operation of unit coal trains and has proposed a modified plan to eliminate these problems. This new construction along new rail line right-of-way would be utilized by Alternatives B, C, or D. The new alignment would branch from DM&E’s existing system approximately 3 miles south of Wasta, just north of where the proposed new construction would begin. It would curve eastward, cross the Cheyenne River, turn northward to near Interstate 90. It would generally parallel I-90, approximately 0.5 mile to the south. Approximately 5 miles west of Wall the alignment would extend away from I-90, then turn northeasterly, crossing I-90 approximately 1.5 miles west of Wall. After crossing I-90, the alignment would curve to the east, joining with the existing system approximately 0.25 mile north of Wall.

⁵The applicant conducted numerous site visits and public meetings during the development of this alternative, including meeting with landowners potentially affected by this alignment and Federal and state agencies to discuss adjustments and ways to minimize impacts on environmental resources and individual landowners. Thus, some individuals, including potentially affected landowners, are already aware of the Alternative C alignment.

the Joint Line into the Powder River Basin and connecting to the mines, referred to as Alternative D1. This alternative would involve utilization and rebuilding of existing DM&E rail line and new construction immediately adjacent to the existing BNSF and Joint Lines.

•• utilization of the existing DM&E line westward to Rapid City, then southward to Crawford, Nebraska, construction of new line westward to Crandall, Wyoming along a previously abandoned UP rail line right-of-way, then northward parallel to the existing into the Powder River Basin and accessing the mines, referred to as Alternative D2. This alternative would involve utilization and rebuilding of existing DM&E rail line and new construction between Crawford and Crandell and immediately adjacent to the existing Joint Line.

•• utilization of the existing DM&E line westward to Rapid City, then southward to Crawford, Nebraska, then northward parallel to the existing BNSF line to near Newcastle, Wyoming, turning westward to parallel State Highway 450 to the Joint Line, then following the Joint Line north and south to access the mines, referred to as Alternative D3. This alternative would involve utilization and rebuilding of existing DM&E rail line and new construction parallel to the BNSF line northward from Crawford, new construction westward along State Highway 450, and new construction along the existing Joint Line to access the mines.

•• construction of new rail line extending from DM&E's existing line near Wasta, South Dakota south and west to Edgemont, South Dakota⁶ and then northward parallel to the existing BNSF line to near Newcastle, Wyoming, turning westward to parallel State Highway 450 to the Joint Line, then following the Joint Line north and south to access the mines, referred to as Alternative D4. This alternative would involve new construction along new rail line right-of-way between Wasta and Edgemont, new construction parallel to the BNSF line northward from Edgemont, new construction westward along State Highway 450, and new construction along the existing Joint Line to access the mines.

•• utilization of the existing DM&E line westward to Alto, South Dakota, approximately 10 miles east of Pierre, South Dakota, then southward to the

⁶The new construction portion of this alternative would involve the portions of both Alternative B and C between their points of diversion from DM&E's existing line near Wasta to where they would begin to parallel the existing BNSF line northwest of Edgemont.

former Milwaukee Road rail line right-of-way (now Dakota Southern Rail owned and operated by the State of South Dakota) near Draper, South Dakota, then westward utilizing the State-owned rail line right-of-way and grade to the point this railbed intersects DM&E's proposed new construction alignment approximately 2 miles south of State Highway 44 in Pennington County, South Dakota, then following the alignment proposed for the new construction into the Powder River Basin, referred to as Alternative D5. This alternative would involve approximately 40 miles of new construction, including a new rail bridge over the Missouri River, and the rebuilding of approximately 100 miles of former rail line on the existing State-owned right-of-way. This alternative would eliminate the need for approximately 30 miles of new construction south of Wasta and around Wall, South Dakota and the rebuilding of approximately 100 miles of existing DM&E rail line between Pierre and Wasta.

B. Rail Line Construction on New Right-of-Way Along DM&E's Existing Rail System UP Bypass at Mankato, Minnesota

(1) the "No Action Alternative," referred to as Alternative M1.

(2) the "Proposed Action," or "Southern Alternative," referred to as Alternative M2. This alternative would include the alternative identified by DM&E as the preferred alternative in its application to the Board and involves construction of new rail line in a loop south of Mankato to connect DM&E trackage on the west and east sides of Mankato.

(3) the "Existing Rail Corridor Alternative," or the "Middle Alternative," referred to as Alternative M3. This alternative would include construction of a new rail line connecting the ends of DM&E's existing system on either side of Mankato generally along and within an existing rail corridor through Mankato. This corridor is currently only occupied by UP and contains the UP line DM&E must currently operate over, via trackage right, for access between its existing rail lines east and west of Mankato.

(4) the "Northern Alternative," referred to as Alternative M4. This alternative would include an alignment connecting the two portions of DM&E's existing system through construction of new rail line in a loop north of Mankato and North Mankato.

C. I&M Connection at Owatonna, Minnesota

(1) the "No Action Alternative," referred to as Alternative O1.

(2) the “Proposed Action,” referred to as Alternative O2. This alternative would include the alternative identified by DM&E as the preferred alternative in its application to the Board and involves construction of a connecting rail line to allow interchange of rail traffic between DM&E and I&M Rail Link.

(3) the alternative alignment, referred to as Alternative O3. This alternative would include another alignment to the construction alternative proposed by DM&E in its application to the Board. It involves construction of a connecting rail line to allow interchange of rail traffic between DM&E and I&M Rail link approximately one mile west of Alternative O2.

In addition to the alternatives discussed above, the EIS will evaluate other subsequently identified alternatives determined reasonable and feasible in light of the purpose and need for the proposed action. This may include the City of Rochester’s South Bypass Proposal.

Public Participation: Scoping workshops were attended by over 1,000 people. Over 600 scoping comment forms and well over 1,000 letters raising environmental issues were received. As part of the environmental review process to date, the agencies have conducted broad public outreach activities to inform the public about DM&E’s proposal and to facilitate public participation. The agencies have consulted and will continue to consult with Federal, state, and local agencies, American Indian Tribal governments, affected communities, landowners, and all interested parties to gather and disseminate information about the proposal. In addition, comments continue to be accepted on all aspects of the environmental review process and potential environmental impacts. Moreover, the agencies are specifically requesting comments in this final scope on the Modified Proposed Action, referred to as Alternative C, and the City of Rochester’s South Bypass Proposal.

The agencies continue to encourage extensive public participation in the EIS process. Comments have been received and will continue to be accepted throughout the environmental process. To further assist in obtaining information about the environmental review process, the agencies have provided a toll-free environmental hotline (1-877-404-3044).

Response to Comments: The agencies reviewed and considered all comments received in their preparation of this final scope of the EIS. The final scope reflects changes made as a result of comments received addressing environmental issues and concerns, as well as comments on the draft scope, previously distributed at public scoping workshops and published in the Federal Register. Other changes in the final scope were made for clarification or as a result of additional analysis. Additions and modifications reflected in the final scope include:

- Analysis of construction impacts resulting from the rebuilding of the applicant’s existing system, including sidings and yard facilities (with alternative locations). Over 70 written and numerous oral comments requesting that this analysis be conducted were received. The

rebuilding of DM&E's existing line, and the construction of sidings and yard facilities on DM&E's existing right-of-way, would not normally be included in an EIS prepared by the Board. However, as discussed above, because one of the cooperating agencies — the U.S. Army Corps of Engineers (COE)— requires such analysis, construction related impacts along the rail line to be rebuilt will be analyzed in this EIS to the extent necessary to satisfy the COE's permitting requirements under the Clean Water Act.

- Sidings and yard facilities (with alternative locations) for the new construction. The draft scope did not explicitly note that these facilities would be addressed in the EIS. As a point of clarification, sidings, yards, and other new rail facilities along the new construction portion of the project will be included in the EIS analysis.
- Analysis of air quality impacts related to fugitive coal dust. Over 350 written and numerous oral comments were received concerning the potential impacts of fugitive coal dust as it applies to both air quality and fire hazard. In response, the agencies have added the analysis of these potential impacts from coal dust to the final EIS scope.
- Analysis of downline impacts. The draft scope indicated that the EIS would address the potential environmental impacts associated with increased levels of rail traffic above the Board's thresholds, which would include DM&E's existing mainline between Wasta, South Dakota, eastward to its termination at Goodview, Minnesota. Because of the proximity of the communities of Goodview and Winona, Minnesota, the reasonably foreseeable potential impact of the project on them due to their location at the terminus of DM&E's system, and the numerous requests to include them in the analysis, the EIS will be expanded to include an appropriate analysis of those portions of the UP and Canadian Pacific (CP) lines potentially impacted by this project within the communities of Goodview and Winona, Minnesota.
- Analysis of increases in barge traffic. In its application, DM&E indicated a portion of the coal transported by the proposed project could be available for delivery by barge to utilities along the Mississippi and Ohio Rivers and within its identified core market area. Subsequently, during scoping, several written and oral comments asked that the impacts of increased barge traffic on the Mississippi River, specifically the Upper Mississippi River National Fish and Wildlife Refuge (Refuge), as a result of DM&E's proposal, be addressed in the EIS.

Based on more information from the applicant concerning potential impacts to barge traffic from DM&E's anticipated rail operations, it appears that barge loading facilities currently available could not accommodate unit coal trains of the type DM&E would be operating. Additionally, DM&E has no estimates of the reasonably foreseeable amount of coal to be transported by barge, as this would depend on market demand from a specific segment of its identified core market. Any projections of potential coal volumes to be

transported by barge, therefore, are speculative at this time. In addition, such projections are dependent on the development of facilities capable of loading barges from unit coal trains.⁷

Because there is a high level of uncertainty about both the future development of a barge loading facility and the amount of coal that DM&E would transload to barge, any related impact to the Mississippi River generally and the Refuge specifically does not meet the “reasonably foreseeable” standard set by the Council on Environmental Quality (CEQ) for impacts analysis. See 40 CFR 1508.8; Forty Questions No. 18. Increases in barge traffic as a result of DM&E’s proposal, therefore, will not be evaluated in this EIS.

- Vehicular traffic levels for evaluation. The air quality and transportation systems sections of the draft scope indicated grade crossings with vehicular traffic levels of 5,000 vehicles per day or more would be included in these analyses. In prior cases, this level of traffic has been considered by the lead agency, the Board, to be a conservative and appropriate baseline. Over 300 written and numerous oral comments were received pertaining to vehicular delay and access, particularly as they apply to the issues of air quality and transportation. A few commenters requested reduction in the traffic levels for evaluation in the EIS. The Board, in consultation with its cooperating agencies, has determined that a grade crossing traffic volume of 5,000 vehicles per day is appropriate for EIS evaluation. However, in response to concerns that have been raised, the Board will expand its analysis of impacts at grade crossings to specific crossings of less than 5,000 vehicles per day if unique circumstances discovered during the course of the environmental review process make it appropriate to include the crossings.
- Safety analysis. Based on comments received, the agencies have determined the EIS analysis will include the potential safety impacts of the project on affected facilities, such as the Federal Medical Center in Rochester, Minnesota.
- Analysis of vibration. Over 200 written and numerous oral comments were received expressing concern for the potential impacts resulting from train induced vibration. In response to these comments the agencies have revised the final scope of the EIS to include an analysis of the potential impacts of vibration, including impacts to structures, sensitive equipment, and alarm systems.
- Analysis of aesthetics. The analysis of aesthetics in the EIS will include the potential impacts of the proposed new rail line construction on areas determined to be of high visual

⁷Should a barge facility be developed, it would likely require an environmental review under NEPA. Such a review would likely require evaluation of the impacts of increased barge traffic on the river, including impacts to the Refuge, resulting from the development and operation of such a facility.

quality, as discussed in the draft scope. Based on comments received, the agencies clarify that the following criteria will be considered in evaluating areas of high visual quality: perception of isolation, feeling of vastness, and the wide open nature of the area.

- Quality of life issues. Several written and numerous oral comments were received regarding various potential quality of life impacts, including division of communities, isolation of residences, access to destinations, annoyance from increased noise and vibration, and traffic delays. The final scope has been clarified to include those quality of life issues involving division of communities, isolation of residences, access to destinations and similar concerns in the socioeconomic section. Annoyance from increased noise and vibration will be addressed in the noise section and annoyance from traffic delays will be covered within the transportation systems section.
- Distinction between public versus private lands. The agencies have clarified the land use section of the final scope to define the evaluation of existing land use patterns to include identification of private and public lands and the potential project impacts related to both.
- Potential impacts to utilities. The agencies have added to the land use evaluation of the final scope of the EIS an evaluation of potential project impacts on utilities, including pipelines, electrical lines, telephone lines, and any others in the vicinity of the project.
- Evaluation of mineral resources. The geology and soils section of the final scope of the EIS has been expanded to include an evaluation of the potential impacts of the project on mineral resources within the project area.
- Placement of paleontological resources evaluation. The draft scope included the evaluation of potential project impacts to paleontological resources within the cultural resources section. Based on comments received during scoping, the agencies have moved the discussion of paleontological resources to the geology and soils section of the final scope.

Additional Comment Period on the “Modified Proposed Action,” referred to as Alternative C and City of Rochester’s South Bypass Proposal

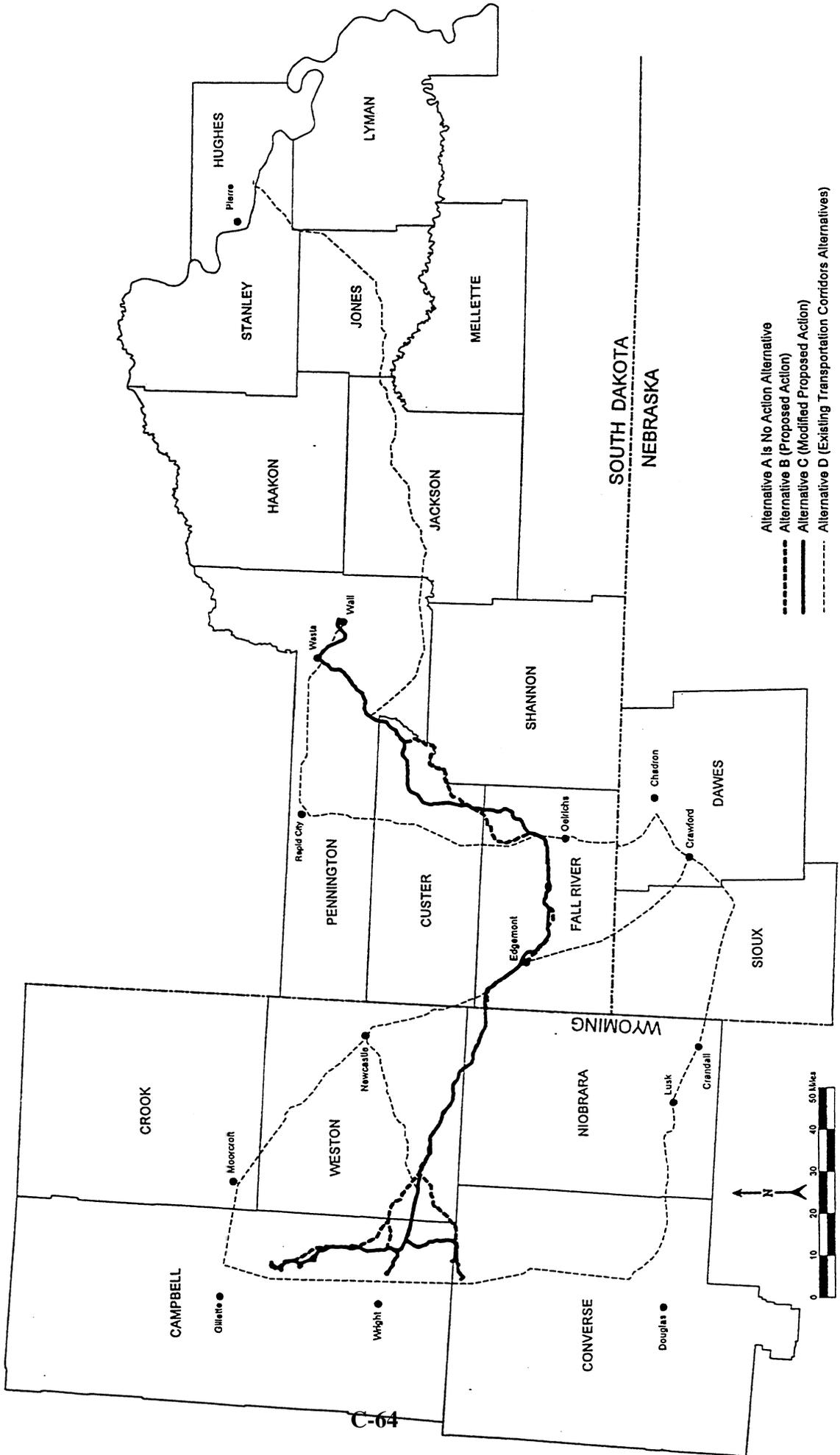
As stated above, in this final scope the agencies are providing an opportunity for all interested parties to submit their views during a 30 day comment period on the potential environmental impacts of the “Modified Proposed Action,” referred to as Alternative C. This comment period is in addition to the further comment period that will be provided on all aspects of the DEIS when it is issued. With regard to the City of Rochester’s South Bypass Proposal, the agencies will consider the additional information submitted during the 30 day comment period to make a final determination of whether the South Bypass Proposal is a reasonable and feasible alternative designed to meet the purpose and need of the applicant’s proposed action. The agencies

have provided a general description of both the Modified Proposed Alternative, known as Alternative C, and the City of Rochester's South Bypass Proposal below:

Description of Modified Proposed Action," referred to as Alternative C

Alternative C, the Modified Proposed Action, would diverge from DM&E's existing system approximately three miles south of Wasta, South Dakota. It would generally follow the Cheyenne River along the sideslope of the floodplain on the west side of the river. It would cross State Highway 44 approximately 2 miles west of where the highway crosses the Cheyenne River and continue southward along Spring Creek for approximately 10 miles. Alternative C would cross Spring Creek where the creek bends to the west, with the rail line alternative extending in a generally westward direction for approximately 12 miles before turning southward. It would extend southward for approximately 16 miles, crossing the Cheyenne River just south of the Custer-Fall River County Line. Alternative C would continue southward for 5 miles, then curve westward to join with DM&E's existing line just north of Smithwick, South Dakota. It would utilize this existing rail line for approximately four miles, then branch from the existing line, extending westward for approximately 28 miles, then curve northward, passing approximately 2 miles east of Edgemont, South Dakota. Approximately 2 miles north of Edgemont, Alternative C would parallel the existing BNSF for approximately 13 miles before crossing over the BNSF line and extending westward into Wyoming, following the Cheyenne River for approximately 11 miles. After crossing U.S. Highway 85, Alternative C would extend in a generally northwest direction, crossing Black Thunder Creek approximately 4 miles south of where State Highway 450 crosses Black Thunder Creek. Alternative C would extend westward, generally parallel to and south of State Highway 450, along Little Thunder Creek. Approximately 4 miles east of the Jacob's Ranch Coal Mine, Alternative C would split and one branch would extend north along the east side of the region's coal mines, converging with the existing joint rail line in the vicinity of the Belle Ayr and Caballo Rojo mines. The southern branch would extend southward, also along the east side of the areas coal mines, accessing the North Antelope, Rochelle, and Antelope Coal Mines.

DM&E RAILROAD CORPORATION POWDER RIVER BASIN EXPANSION PROJECT ALTERNATIVES



City of Rochester's South Bypass Proposal

On January 6, 1999, the City of Rochester, Minnesota (the City) requested that SEA consider a south bypass corridor as an alternative to DM&E's proposed plan to rehabilitate its existing rail line and operate additional rail traffic, primarily coal trains, through Rochester. As part of its submission, the City has attached an engineering report commissioned jointly by the City and Olmsted County.⁸ The report, entitled Mitigation of Safety and Environmental Issues Associated with The Dakota Minnesota & Eastern Railroad's Proposed Expansion Through the City of Rochester and Olmsted County, Minnesota, contains information on the southern bypass route and proposed mitigation for the existing DM&E rail corridor.

Description of Proposed South Bypass

The report states that its intent is to "assess the impacts the additional train traffic would have on the communities and the environment within the county and, if appropriate, recommend reasonable, effective, and practical alternatives for mitigation of these impacts." Report p. 2. To that end, the report states that after assessing the increased potential for train/vehicle collisions at grade crossings if DM&E's proposal were to be approved, several options for mitigating these potential safety impacts were considered, including construction of a depressed trainway, construction of a tunnel beneath the City, construction of a north bypass, and construction of a south bypass. According to the report, the trench, tunnel, and north bypass options were found not to be viable so the report focused on a south bypass and an existing corridor improvement option.⁹ Report p. 6.

The report describes the south bypass as follows: the route would be 34.1 miles long and would diverge south from DM&E's mail track in Dodge County at milepost 61.1, approximately .8 miles west of the Olmsted County line west of Byron, Minnesota. The route then would travel due south approximately 9.5 miles through portions of Salem and Rock Dell Township. The line would then travel generally eastward through High Forrest, Marion, Pleasant Grove, and Eyota Townships. The line would reconnect with DM&E's existing system at milepost 37.5, approximately 8.2 miles west of the east Olmsted County line.

⁸The report was prepared by the engineering firms of Toltz, Duvall, Anderson and Associates of St. Paul, Minnesota and its subconsultant, Black and Veatch located in Overland, Kansas. A copy has been placed in the environmental record in this case. We urge interested parties or members of the public to review the report itself. We explain below how to obtain a copy of the report.

⁹The report notes, however, that the City is continuing to gather data on the feasibility of the tunnel option. See p. 6

According to the report, the south bypass would require acquisition of approximately 887 acres for a 200-foot wide new right-of-way. Twelve households would be located within 500 feet of the rail centerline. Fifty-one households would be within 1200 feet of the centerline. The bypass would cross forty-two intermittent creeks or waterways, none of which are major according to the report's engineers. Thirty-eight roadways (seventeen of which are paved and eighteen of which have average daily traffic counts less than 100 vehicles) would be crossed.

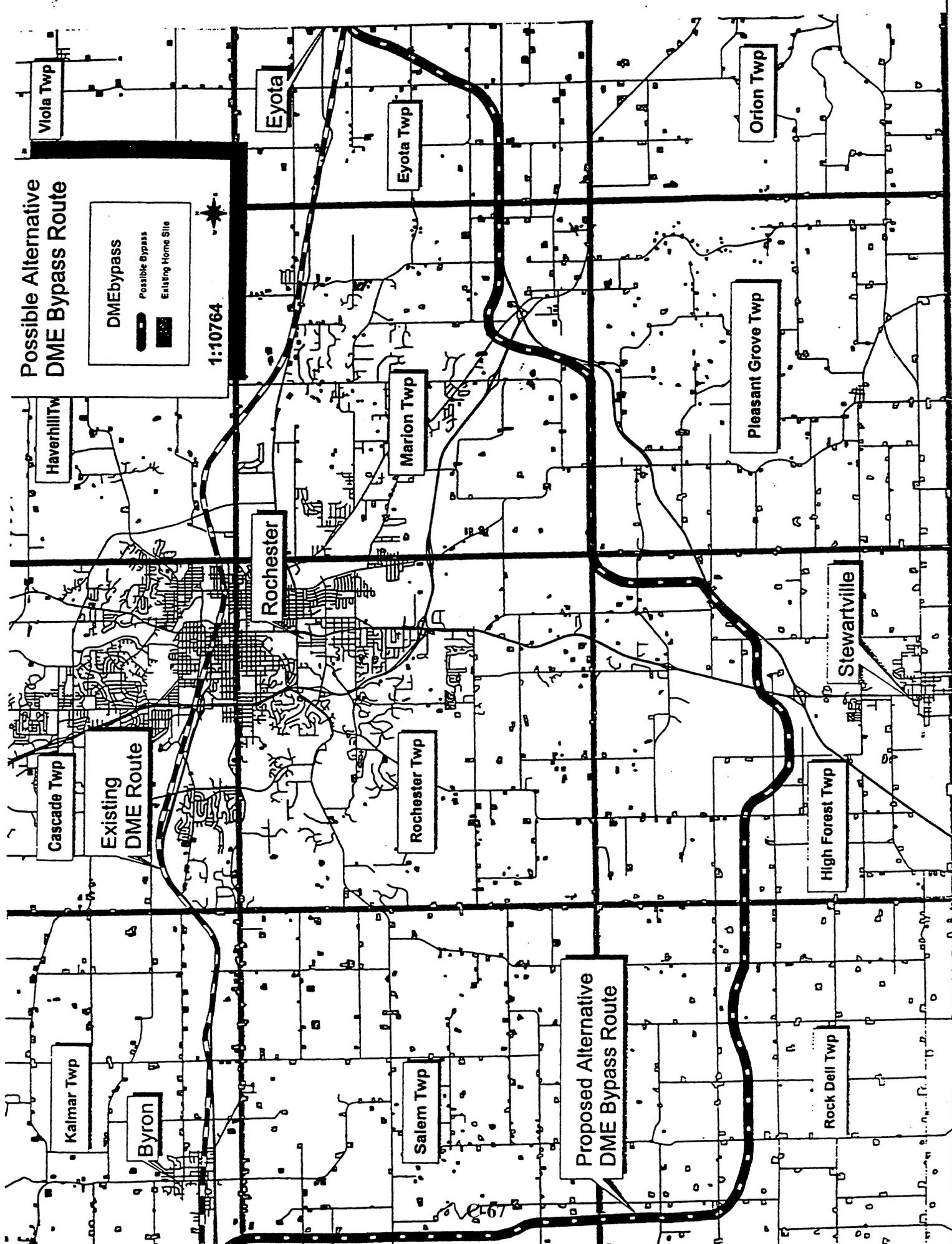
The report also sets forth details of design criteria, including curves and profile grades, track specifications, embankment and side slopes, bridges, highway crossings and signals, fencing, cut and fill requirements, wetlands, and endangered species. Report pp. 7-13. In addition, the report includes an estimated cost of \$115,334,000 for acquisition and construction of the south bypass. Report p. 12.

The report concludes that the south bypass would effectively mitigate adverse impacts to the City and Olmsted County by avoiding population areas. In addition, the report states that the bypass would present operational advantages to DM&E, such as improved curvature, a wider right-of-way, and increased opportunities for future development and additional trackage. Report p. 14. The report notes that the south bypass route would not require DM&E to abandon service to its existing customers, and that light local rail traffic could continue over DM&E's present line through the City. Report p. 15.

Possible Alternative
DME Bypass Route

DMEbypass
Possible Bypass
Existing Home Site

1:10764



City of Rochester's Proposed Mitigation of DM&E's Existing Corridor

The report also proposes a number of improvements to DM&E's existing corridor through the City¹⁰ designed to mitigate potential environmental impacts if DM&E's proposal were to be approved.¹¹ The improvements include replacing all of the main track with 136-lb continuously welded rail, replacing all poor or marginal timber cross ties, replacing all turnouts along the main track, installing power switch machines and switch heaters at all heavily used locations, replacing all timber trestle bridges, replacing or strengthening all of the steel bridges to support heavier axle loads, cleaning and installing additional rock ballast and re-profiling the existing line, cleaning drainage ditches and repairing culverts and marginal embankments, and replacing all at grade crossing surfaces following reconstruction of the track.

The report goes on to recommend additional work to reduce potential safety, environmental, congestion, and quality of life problems. Moreover, the report recommends construction of eleven separated grade crossings, closure of seven grade crossings, and protection with train activated flashing light signal and automatic gate arms at the seventeen remaining crossings. Other recommended mitigation includes sound barrier walls, fencing, and pedestrian crossings. The report includes an estimated cost of \$119,300,000 for the recommended mitigation of DM&E's existing corridor. Report p. 21.

Public Participation and Request for Comments

Pursuant to NEPA, the EIS must explore and evaluate a reasonable range of alternatives designed to meet the purpose and need of the proposal. If alternatives have been eliminated from detailed study, the EIS must briefly discuss why these alternatives have been discarded. See 40 CFR 1502.14(a); Forty Questions No. 1(a). CEQ's guidance states that "[r]easonable alternatives include those that are practical or feasible from the technical and economic standpoint and using commonsense, rather than simply desirable from the standpoint of the applicant." Forty Questions No. 2a.

The City's submission contains sufficient information for the Board, in consultation with its cooperating agencies, to make a preliminary determination that the south bypass may be a feasible alternative routing. However, we do not yet have the benefit of the applicant's views, nor those of

¹⁰The report defines the corridor as DM&E's 31.0 mile long main track traveling east-west through Olmsted County and .8 miles located in Dodge County. Report p. 15.

¹¹The DEIS will assess potential environmental impacts that would result from rebuilding DM&E's existing line and operating a maximum of 37 trains, including 34 unit coal trains over the rebuilt line. The DEIS will assess proposals for mitigation of impacts and independently develop recommended mitigation measures.

the affected members of the public or other interested parties as to the feasibility of the south bypass, or whether it would simply shift to different communities and populations the potential environmental consequences of the applicant's proposed route. To ensure that the agencies have as much information as possible on the south bypass in preparing the DEIS, SEA has decided to provide an opportunity for interested parties and members of the public to submit comments on the feasibility of the City's proposal prior to the issuance of the DEIS.¹²

In addition, as discussed above, the agencies are seeking comments on the potential environmental impacts of the "Modified Proposed Action," referred to as Alternative C.

Comments on Alternative C and on the City's proposal can be submitted to the Surface Transportation Board within 30 days of publication of the final scope and request for comments in the Federal Register. Comments should be sent to:

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

To ensure proper handling of your comments, you must mark your submission:

Attention: Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing

The DEIS will include an appropriate discussion of the south bypass and recommended mitigation and a determination as to whether the bypass would be a reasonable and feasible alternative. The public then will have the opportunity to review and comment on these conclusions regarding the south bypass during the comment period on the DEIS. The DEIS will contain information on the agencies' conclusions regarding the City of Rochester's South Bypass Proposal. An opportunity for further comment will be provided at that time.

¹²Detailed information, including maps, of Rochester's proposed south bypass and mitigation of DM&E's existing corridor may be obtained from:

The Rochester-Olmsted County Department of Planning
2122 Campus Drive, SE
Rochester, MN 55904
(507) 285-8232

Agency Actions: Based on CEQ's and each agencies' regulations implementing NEPA, the draft scope, oral and written comments received, and all other information available to date, the agencies have prepared this final scope of the EIS. This final scope of the EIS will be distributed to all Parties of Record, interested parties and American Indian Tribal governments, and appropriate Federal, state, and local agencies.

Based on the agencies' environmental analysis, review of all information available to-date, and consultations with appropriate American Indian Tribal governments and agencies, the agencies will prepare the DEIS. The DEIS will address relevant environmental concerns, as generally described in this final scope of the EIS and recommend appropriate environmental mitigation. The agencies will afford an opportunity for public comments on the DEIS. Once comments have been received and assessed, the agencies will issue the FEIS, which will respond to comments and, if appropriate, set forth additional analysis and information. Following the close of the environmental record, the Board and each of the cooperating agencies will then issue final decisions on the proposed action.

Environmental Impact Analysis

Analysis in the EIS will address, as appropriate, the potential environmental impacts of proposed activities associated with the construction and operation of DM&E's new rail facilities, as well as construction and operation activities associated with the rebuilding of DM&E's existing mainline. The scope of the analysis will include the following activities:

1. Proposed construction of new rail mainline extension to access coal mines south of Gillette, Wyoming.
2. Proposed construction of new rail mainline to bypass DM&E's existing trackage rights on UP in Mankato, Minnesota.
3. Proposed construction of new rail line connection between DM&E and I&M Rail Link south of Owatonna, Minnesota.
4. Proposed upgrade along DM&E's existing track from the point of connection with new construction between Wasta, South Dakota and Winona, Minnesota.

Impact Categories

The EIS will address potential impacts from the proposed construction and operation of new rail facilities on the human and natural environment. Impact areas addressed will include the categories of land use, biological resources, water resources, geology and soils, air quality, noise, energy resources, socioeconomics as they relate to physical changes in the environment, safety, transportation systems, cultural and historic resources, recreation, aesthetics, environmental justice,

and cumulative effects. The EIS will include a discussion of each of these categories as they currently exist in the project area and address the potential impacts from the proposed project on each category as described below.

The EIS analysis will also address construction and operation related impacts associated with the rebuilding of DM&E's existing mainline from the point of connection with the new construction segments between Wasta, South Dakota and Winona, Minnesota. Such action, being confined within existing rail right-of-way and on existing rail property, would not normally be included in an EIS prepared by the Board. Only the potential impacts associated with rail traffic increases on DM&E's existing system resultant from the construction and operation of the proposed project would be evaluated. However, because the U.S. Army, Corps of Engineers, a cooperating agency, requires such analysis to satisfy its permitting requirements under the Clean Water Act and comments requesting such analysis be conducted were received, analysis of construction related impacts along the rail line to be rebuilt will be included in this EIS. In addition to the analysis of potential project impacts related to operational increases in rail traffic (noise, air quality, transportation, safety), the construction related impacts to land use, biological resources, water resources, geology and soils, air quality, noise, socioeconomics, safety, hazardous materials, transportation systems, cultural and historic resources, environmental justice, and cumulative effects will be analyzed as discussed below.

1. Land Use

The EIS will:

- A. Describe existing land use patterns, management, and ownership (private and public) within the project area for new rail line construction and along the existing rail line to be rebuilt and identify those land uses and the amounts of each potentially impacted by new rail line construction and rail line rebuild.
- B. Describe the potential impacts associated with the proposed construction and operation of new rail line and existing rail line to be rebuilt to cropland, pastureland, rangeland, grassland, woodland, developed land, school endowment land, BLM lands,¹³ Forest Service lands, state lands, utilities, and any other land uses identified within the project area. Such potential impacts may include but not be limited to impacts to farming/ranching activities, introduction of noxious weeds, fire hazard, incompatibility with existing land uses, relocation of residences or businesses, and conversion of land to railroad uses.
- C. Propose mitigative measures to minimize or eliminate potential adverse project impacts to land use, as appropriate.

¹³This term includes those lands for which the BLM administers the land and/or the mineral estate.

2. Biological Resources

The EIS will:

- A. Describe the existing biological resources within the project area for new rail line construction and along the existing rail line to be rebuilt, including vegetative communities, wildlife and fisheries, federally threatened or endangered species, and any sensitive vegetation and wildlife identified and the potential impacts to these resources resultant from construction and operation of new rail line and the existing rail line to be rebuilt.
- B. Describe the wildlife sanctuaries, refuges, and national or state parks, forests, or grasslands within the project area for new construction and along the existing rail line to be rebuilt and the potential impacts to these resources resultant from construction and operation of new rail line and existing rail line to be rebuilt.
- C. Propose mitigative measures to minimize or eliminate potential adverse project impacts to biological resources, as appropriate.

3. Water Resources

The EIS will:

- A. Describe the existing surface and groundwater resources within the project area for new rail line construction and along the existing rail line to be rebuilt, including lakes, rivers, streams, stock ponds, wetlands, aquifers, wells, and floodplains and the potential impacts on these resources resultant from construction and operation of new rail line and the existing rail line to be rebuilt.
- B. Describe the existing uses of water resources in the project area for irrigation, livestock, residential, and municipal water supply.
- C. Describe the permitting requirements for the proposed new rail line construction and existing rail line rebuild in regard to wetlands, stream crossings, water quality, and erosion control.
- D. Propose mitigative measures to minimize or eliminate potential adverse project impacts to water resources and users, as appropriate.

4. Geology and Soils

The EIS will:

- A. Describe the geology, soils, and mineral resources found within the project area for new rail line construction and along the existing rail line to be rebuilt, including unique or problematic geologic formations or soils, prime farmland soils, and recoverable mineral resources.

- B. Describe measures employed to avoid or construct through unique or problematic geologic formations or soils.
- C. Describe the impacts of new rail line and existing rail line rebuild construction activities on prime farmland soils.
- D. Describe the potential impacts to mineral resources within the project area for new construction and along the existing rail line to be rebuilt.
- E. Describe the potential general impacts to paleontological resources in the project area for new construction and along the existing rail line to be rebuilt due to new rail line construction and existing rail line rebuild activities, if necessary and required.
- F. Propose mitigative measures to minimize or eliminate potential adverse project impacts to geology, soils, mineral resources, and paleontological resources, as appropriate.

5. Air Quality

The EIS will:

- A. Discuss the existing air quality in the project area for the new construction, along the existing rail line to be rebuilt, and those portions of the UP and CP rail systems within Goodview and Winona, Minnesota.
- B. Evaluate rail air emissions on new rail line, the existing rail line to be rebuilt, and those portions of the UP and CP rail systems within Goodview and Winona, Minnesota that exceed the Board's environmental thresholds in 49 CFR 1105.7(e)(5)(I), in an air quality attainment or maintenance area as designated under the Clean Air Act . The threshold anticipated to apply to this project is eight trains per day on any segment of new rail line.
- C. Evaluate rail air emissions on new rail line, the existing rail line to be rebuilt, and those portions of the UP and CP rail systems within Goodview and Winona, Minnesota, if a Class I or non-attainment area as designated under the Clean Air Act is affected. The threshold for Class I and non-attainment areas anticipated to apply to this project is 3 trains per day or more.
- D. Evaluate the potential air quality impacts associated with the increased availability and utilization of Powder River Basin coal.
- E. Discuss the net increase in emissions from increased railroad operations associated with the proposed operations over new rail line, the existing DM&E system and other

rail systems as appropriate, including those portions of the UP and CP systems within Goodview and Winona, Minnesota.

- F. Discuss the potential air emissions increases from vehicle delays at new and existing grade rail crossings where the rail crossing is projected to experience an increase in rail traffic over the threshold described above for attainment, maintenance, Class I, and non-attainment areas and that have an average daily vehicle traffic level of over 5,000. Emissions from vehicle delays at new and existing grade rail crossings and idling diesel engines and coal dust will be factored into the emissions estimates for the affected area, as appropriate.
- G. Describe the potential air quality impacts of emissions from idling diesel locomotives and coal dust produced during train operation.
- H. Describe the potential air quality impacts resulting during new rail line and existing rail line rebuild construction activities.
- I. Propose mitigative measures to minimize or eliminate potential adverse project impacts to air quality, as appropriate.

6. Noise

The EIS will:

- A. Describe existing noise receptors and conditions in the project area for new rail line construction, along the existing rail line to be rebuilt, and the portions of the UP and CP rail lines within Goodview and Winona, Minnesota.
- B. Describe the potential noise impacts during new and existing rail line construction and rebuilding.
- C. Describe potential noise impacts of new and rebuilt existing rail line operation for those areas that exceed the Board's environmental threshold of eight or more trains per day as a result of the proposed project along the proposed new construction, the existing rail line to be rebuilt, and along the portions of the UP and CP rail lines within Goodview and Winona, Minnesota.
- D. Describe the potential impacts of the new and rebuilt existing rail line operation due to vibration, both noise and ground-borne along the proposed new construction, the existing rail line to be rebuilt, and along the portions of the UP and CP rail lines within Goodview and Winona, Minnesota.
- E. Propose mitigative measures to minimize or eliminate potential adverse project impacts to noise and vibration receptors, as appropriate.

7. Energy Resources

The EIS will:

- A. Describe the transport of energy resources and recyclable commodities on the existing DM&E system.
- B. Describe the potential environmental impact of the new rail line and rebuilt existing rail line on the transportation of energy resources and recyclable commodities.
- C. Describe the environmental impacts of operation of the new rail line and rebuilt existing rail line on utilization of the nations energy resources.
- D. Propose mitigative measures to minimize or eliminate potential adverse project impacts to the transportation of energy resources and recyclable commodities, as appropriate.

8. Socioeconomics

The EIS will:

- A. Describe the socioeconomic conditions within the area of new construction alternatives and along the existing line to be rebuilt.
- B. Address socioeconomic issues shown to be related to changes in the physical environment as a result of the proposed action, including quality of life issues such as division of communities, isolation of residences, access to destinations and similar concerns.
- C. Propose mitigative measures to minimize or eliminate potential adverse project impacts to socioeconomics, as appropriate.

9. Safety

The EIS will:

- A. Describe rail/highway grade crossing safety factors at new grade crossings, as appropriate.
- B. Describe rail/highway grade crossing safety factors at existing grade crossings along the portion of DM&E's system to be rebuilt and those portions of the UP and CP systems within Goodview and Winona, Minnesota.
- C. Describe the potential for increased probability of train accidents, derailments, and train/vehicular accidents at new and existing grade crossings, as appropriate.
- D. Describe the potential for disruption and delays to the movement of emergency vehicles across the new rail line, existing rail line to be rebuilt, and those portions of

the UP and CP systems within Goodview and Winona, Minnesota due to new rail line construction and operation.

- E. Describe the changes at existing grade crossings implemented to increase safety at existing grade crossings due to increased rail operations on the DM&E system. Such changes would include signalization upgrades and conversion of grade crossings to grade separated crossings.
- F. Propose mitigative measures to minimize or eliminate potential adverse project impacts to safety, as appropriate.

10. Hazardous Materials

The EIS will:

- A. Describe any know hazardous materials sites along the preferred and alternative construction alignments and the existing rail line to be rebuilt.
- B. Describe the transport of any hazardous materials over the existing DM&E system and those portions of the UP and CP rail systems within Goodview and Winona, Minnesota.
- C. Describe the potential impacts to hazardous materials sites along the preferred and alternative alignments.
- D. Describe the potential impacts to the transport of any hazardous materials over the existing DM&E system, new rail line proposed for construction, and those portions of the UP and CP rail systems within Goodview and Winona, Minnesota.
- E. Propose mitigative measures to minimize or eliminate potential adverse project impacts to hazardous materials and the transport of any hazardous materials, as appropriate.

11. Transportation Systems

The EIS will:

- A. Describe the potential effects of new rail line construction and operation on the existing transportation network in the project area including:
 - (1) impact to the existing DM&E system operations
 - (2) impacts to other rail carriers' operations
 - (3) vehicular delays at new grade crossings for those crossings having average daily vehicle traffic of 5,000 or more and
 - (4) vehicular delays at existing grade crossings that are part of the portion of the existing system proposed to be rebuilt for those crossings having average daily vehicle traffic of 5,000 or more.

- (5) vehicular delays at existing grade crossings along those portions of the UP and CP rail systems within Goodview and Winona, Minnesota for those crossings having average daily vehicle traffic of 5,000 or more.
 - (6) vehicular delays at existing and new grade crossings having average daily traffic of less than 5,000 vehicles but have unique circumstances that make such evaluation appropriate.
- B. Propose mitigative measures to minimize or eliminate potential adverse project impacts to transportation systems, as appropriate.

12. Cultural and Historic Resources

The EIS will:

- A. Describe the potential impacts to historic structures or districts previously recorded and determined potentially eligible, eligible, or listed on the National Register of Historic Places within or immediately adjacent to the right-of-way for the preferred and alternative construction alignments and the existing rail line to be rebuilt.
- B. Describe the potential impacts to archaeological sites previously recorded and either listed as unevaluated or determined potentially eligible, eligible, or listed on the National Register of Historic Places within the right-of-way for the preferred and alternative construction alignments and the existing rail line to be rebuilt.
- C. Describe the potential impacts to historic structures or districts identified by ground survey and determined potentially eligible or eligible for listing on the National Register of Historic Places within or immediately adjacent to the existing rail line to be rebuilt.
- D. Describe the potential impacts to traditional cultural properties and religious use areas, sacred sites, cultural landscapes, and collection areas for religious and ceremonial plants.
- E. Propose mitigative measures to minimize or eliminate potential adverse project impacts to cultural and historic resources, as appropriate.

13. Recreation

The EIS will:

- A. Describe the existing recreational opportunities and activities present and undertaken in the project area for the new construction and along the existing rail line to be rebuilt.

- B. Describe the potential impacts of the proposed new rail line construction and operation on the recreational opportunities and activities in the project area for the new construction and along the existing rail line to be rebuilt.
- C. Propose mitigative measures to minimize or eliminate potential adverse project impacts to recreation, as appropriate.

14. Aesthetics

The EIS will:

- A. Describe any areas identified or determined to be of high visual quality (components of which may include the wide open nature of the area, the perception of isolation, and feeling of vastness), wilderness areas, or waterways designated as wild and scenic within the project area for the new construction and along the existing rail line to be rebuilt.
- B. Describe the potential impacts of the proposed new rail line construction and existing rail line rebuild on any areas identified or determined to be of high visual quality.
- C. Describe the potential impacts of the proposed new rail line construction and existing rail line rebuild on any designated wilderness areas.
- D. Describe the potential impacts of the proposed new rail line construction and existing rail line rebuild on any waterways considered for or designated as wild and scenic.
- E. Propose mitigative measures to minimize or eliminate potential adverse project impacts to aesthetics, as appropriate.

15. Environmental Justice

The EIS will:

- A. Describe the demographics in the project area and the immediate vicinity of the proposed new construction and along the existing rail line to be rebuilt, as appropriate, including communities potentially impacted by the construction and operation of the proposed new rail line and existing rail line to be rebuilt.
- B. Evaluate whether new rail line and existing rail line construction, rebuild, or operation activities would have a disproportionately high adverse impact on any minority or low-income groups.
- C. Propose mitigative measures to minimize or eliminate potential adverse project impacts to minority or low-income groups, as appropriate.

16. Cumulative Effects

The EIS will discuss cumulative effects of the construction and operation of the new rail line and DM&E's existing system.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary

Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001



News

FOR RELEASE: Contact: Dennis Watson
 Wednesday, March 10, 1999 (202) 565-1596
 No. 99-13 TDD/TDY 1 (800) 877-8339
www.stb.dot.gov

**SURFACE TRANSPORTATION BOARD
 & COOPERATING AGENCIES ISSUE FINAL SCOPE OF STUDY
 FOR ENVIRONMENTAL IMPACT STATEMENT
 RE PROPOSED "DM&E" RAILROAD
 CONSTRUCTION AND OPERATION PROPOSAL**

The Surface Transportation Board (Board) announced today that its Section of Environmental Analysis (SEA) has issued the final scope of study for the Environmental Impact Statement (EIS) regarding the Dakota, Minnesota & Eastern Railroad Corporation's (DM&E) proposed railroad line construction and operation to coal mines in Wyoming's Powder River Basin. Working with the U.S. Department of Agriculture's Forest Service, the U.S. Department of Interior's Bureau of Land Management, and the U.S. Army Corps of Engineers (cooperating agencies), SEA issued the final scope as part of the environmental review process under the National Environmental Policy Act (NEPA).

The final scope reflects issues raised both orally and in writing by agencies and the public during numerous scoping meetings held in Minnesota, South Dakota, and Wyoming. The final scope also takes into account all comments received on environmental issues concerning DM&E's proposal.

In addition to issuing the final scope of the EIS, the Board and the cooperating agencies are providing a 30-day comment period for interested parties to submit comments on two new, proposed alternatives. This comment period is in addition to the public comment period that will be provided on all aspects of the Draft EIS (DEIS) when that document is made available. Specifically, DM&E has developed a Modified Proposed Action (also referred to as "Alternative C"). The Modified Proposed Action includes an alternative alignment in Wyoming and South Dakota for the mainline extension developed by DM&E in response to environmental issues and concerns raised by agencies, local landowners, and other interested parties. The Board and the cooperating agencies are seeking views of all commenters to assess potential environmental impacts of this alternative.

The City of Rochester, MN (Rochester) also has submitted a proposal to construct a rail line that would pass south around that city (South Bypass Proposal). The Board and the cooperating agencies are seeking additional information to assist it in determining whether the South Bypass Proposal is a reasonable and feasible alternative designed to meet the purpose and need of DM&E's proposed action, and will consider such comments.

A DEIS addressing all environmental issues and containing recommended mitigation will be made available for public review and comment. A Final EIS (FEIS) will then be prepared reflecting further analysis and the comments on the DEIS. In reaching their future decisions in this case, the Board and each cooperating agency will take into account the full environmental record, including the DEIS, the FEIS, and all public and agency comments received.

DM&E's proposal involves the construction of approximately 280 miles of new rail line in South Dakota and Wyoming and the upgrading of approximately 600 miles of existing rail line in South Dakota and Minnesota. The project would allow DM&E to extend its existing system westward to access coal mines in the Powder River Basin. On June 10, 1998, SEA issued a draft scope for the EIS and provided a period for submission of written comments on it. On December 10, 1998, the Board issued a decision finding that DM&E's application had satisfied the transportation-related requirements of Section 10901 of Title 49, United States Code (49 U.S.C. 10901), and stated that it would issue a subsequent decision on the entire proposed project after completion of the environmental review process.

Written comments addressing DM&E's Modified Proposed Action and Rochester's South Bypass Proposal must be submitted to the Board by **April 10, 1999**. For further information on how to file comments on these two new alternatives, telephone the Board's toll-free environmental hotline at **1-877-404-3044**.

The Board issued its June 10, 1998 draft scope of the EIS, its December 10, 1998 finding, and today's decision on the final scope of study for the EIS in the case entitled *Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin*, STB Finance Docket No. 33407.

###

**DAKOTA, MINNESOTA & EASTERN RAILROAD
CONSTRUCTION AND OPERATION PROPOSAL**

FINAL SCOPE OF STUDY FOR THE ENVIRONMENTAL IMPACT STATEMENT

The Press Release announcing the issuance and availability of the Final Scope of Study for the Environmental Impact Statement was faxed to the following media on March 10, 1999:

Media Source	City	State	
Coal Daily	Washington	DC	
KROC-AM/FM Radio	Rochester	MN	
KXLP-FM/KYSM-AM/FM Radio	New Ulm	MN	
KTOE-AM/KDOG-FM Radio	Mankato	MN	
KNUJ-AM	New Ulm	MN	
Lincoln County Valley Journal	Lake Benton	MN	
KWOA-AM/FM Radio	Worthington	MN	
Mankato Free Press	Mankato	MN	
Times-Review	Storden		MN
KRFO-AM/FM	Owatonna	MN	
Winona Radio	Winona		MN
Home 101 Radio	Winona	MN	
KMHL Broadcasting	Marshall	MN	
KEYC-TV	Mankato	MN	
KLGR-AM/FM Radio	Redwood Falls	MN	
News-Herald	Le Sueur	MN	
KOWO-AM/KQDE-FM	Waseca	MN	
Houston County News	La Crescent	MN	
KRBI-AM/FM	St. Peter	MN	
KCHK-AM	New Prague	MN	
Pioneer	Watertown	MN	
KQSK-FM	Chadron	NE	
Dow Jones News Wire	Jersey City	NJ	
Reuters News Service	New York	NY	
KSDN Rock 94 Radio	Aberdeen	SD	
KLMP/KSLT-FM Radio	Rapid City	SD	
Rick Mills	Hermosa	SD	
KIQK-FM Radio	Rapid City	SD	
KTOQ-AM Radio	Rapid City	SD	
KKLS-AM/KKMK-FM Radio	Rapid City	SD	
Meade County Times Tribune	Sturgis	SD	
KBHB Radio	Sturgis	SD	
KCLO-TV	Rapid City	SD	
KFXS/KOUT/KIMM Radio	Rapid City	SD	

Media Source	City	State
KEVN/KIVW-TV	Rapid City	SD
KNBN-TV	Rapid City	SD
Elkton Record	Elkton	SD
WNAX Radio	Yankton	SD
KESD-FM Public Radio	Brookings	SD
KBRK-AM/FM Radio	Brookings	SD
KJJQ-AM Radio	Brookings	SD
Lake Preston Times	Lake Preston	SD
Highmore Herald	Highmore	SD
Miller Press	Miller	SD
Pioneer Review	Philip	SD
KBFS Radio	Bell Fouché	SD
Coal Outlook	Knoxville	TN
WKOW-TV	Madison	WI
WVRQ-AM/FM	Viroqua	WI
KGWC-TV	Casper	WY
KKTU-TV	Casper	WY
KWYY-FM Radio	Casper	WY
KTWO-TV	Casper	WY
KKTY-AM/FM Radio	Douglas	WY
Wyoming News Network	Casper	WY
Tri-State Livestock News	Cody	WY
KMUS Radio	Cheyenne	WY
KBBC Radio	Cheyenne	WY
KLEN/KING/KOLT Radio	Cheyenne	WY
KRRR-FM Radio	Cheyenne	WY
KGWN-TV	Cheyenne	WY
KRAE Radio	Cheyenne	WY
KGWY	Gillette	WY
KIML Radio	Gillette	WY
KUWR-Wyoming Public Radio	Laramie	WY

DAKOTA, MINNESOTA & EASTERN RAILROAD
CONSTRUCTION AND OPERATION PROPOSAL

FINAL SCOPE OF STUDY FOR THE ENVIRONMENTAL IMPACT STATEMENT

A Legal Notice announcing the issuance and availability of the Final Scope of Study for the Environmental Impact Statement was faxed to the following media on March 10, 1999:

Media Source	City	State
The News Record	Los Angeles	CA
Rocky Mountain News	Denver	CO
Denver Post	Denver	CO
Maywood Herald	Maywood	IL
Janesville Argus	Janesville	MN
Balaton Press Tribune	Balaton	MN
Dodge County Independent Newspaper	Kasson	MN
The Elysian Enterprise	Elysian	MN
Hastings Star Gazette	Hastings	MN
The Hanska Herald	Hanska	MN
The Hot Springs Star	Hot Spring	MN
Independent	Marshall	MN
Aitkin Independent	Aitkin	MN
Blooming Prairie News	Blooming Prairie	MN
New Ulm Journal	New Ulm	MN
Lafayette-Nicollett Ledger	Lafayette	MN
Lake Region Life	Waterville	MN
Lake Region Times	Madison Lake	MN
Lamberton News	Lamberton	MN
Leader	Le Center	MN
Montgomery Messenger	Montgomery	MN
Minneapolis Star- Tribune	Minneapolis	MN
New Prague Times	New Prague	MN
Star	Stewartville	MN
Northern Star	Clinton	MN
Mountain Lake Observer	Mountain Lake	MN
People's Press	Owatonna	MN
Pope County Tribune	Glenwood	MN
The Echo	Alexandria	MN
Redwood Gazette	Redwood Falls	MN
Post-Bulletin	Rochester	MN
Roseau Times-Region	Roseau	MN
Sleepy Eye Herald	Sleepy Eye	MN
St. James Plaindealer	St. James	MN

Media Source	City	State
St. Paul Pioneer Press	St. Paul	MN
Star-Farmer	Renville	MN
Star-Record	Dodge Center	MN
The Edgerton Enterprise	Edgerton	MN
Ivanhoe Times	Ivanhoe	MN
Le Sueur News-Herald	Le Center	MN
Valley Publications	Wabasha	MN
West Central Tribune	Willmar	MN
Winona Daily News	Winona	MN
Winona Post	Winona	MN
Messenger	Morgan	MN
Worthington Daily	Worthington	MN
Tracy Headlight	Tracy	MN
Lewiston Journal	Lewiston	MN
Laramie Boomerang	Laramie	MN
Morris Tribune	Morris	MN
Pioneer Press	St. Paul	MN
Mapleton River Messenger	Mapleton	MN
St. Peter Herald	St. Peter	MN
Okasis Review	Alexandria	MN
Springfield Advance	Springfield	MN
Comfrey Times	Comfrey	MN
Omaha World-Herald	Omaha	NE
Kadoka Press	Kadoka	SD
Custer County Chronicle	Custer	SD
Huron Plainsman	Huron	SD
The Brookings Register	Brookings	SD
The Capital Journal	Pierre	SD
Rapid City Journal	Rapid City	SD
Argus Leader	Sioux Falls	SD
Byron Review	Byron	SD
Berlin Journal	Berlin	WY
Newsletter Journal	Newcastle	WY
Wyoming Eagle Tribune	Cheyenne	WY
The Douglas Budget	Douglas	WY
Casper Journal	Casper	WY
Casper Star-Tribune	Casper	WY

How Capacity Has Tried To Comply With the Standard in Good Faith

Capacity contacted four different brake component suppliers. Its search for an anti-lock controller began with Lucas/Varity (formerly Kelsey-Hayes) because of its longtime association with Ford Motor Company and the fact that the bus chassis uses a common Dana drive axle with many Ford light duty trucks. But the company was told that no development could be approached until Capacity could guarantee a purchase order in the range of 10,000 controllers.

Capacity next approached Eaton-Bosch, and found that it is currently producing hydraulic anti-lock brake systems for vehicles up to 12,000 lbs GVWR. Although the company is developing a system for vehicles up to 20,000 lbs GVWR, the system won't be finalized until 2001.

The third vendor that Capacity approached was ITT Automotive-Teves, which expects to have a system ready for installation on vehicles up to 20,000 lbs GVWR by the fourth quarter of 1999. The company told Capacity that it will take a minimum of one winter test season to assure that the controller can be adapted to a vehicle. Thus, Capacity does not foresee that it can use this system and comply before the Fall of 2000.

Finally, Capacity consulted Rockwell/Meritor-Wabco System. This company has a controller that "can be fine tuned on a vehicle to meet different dynamic characteristics." However, "even if this system proves out, it appears that a year's testing will be required to adapt it to our bus chassis."

Why Exempting Capacity Would Be Consistent With the Public Interest and Objectives of Motor Vehicle Safety

Capacity argued that an exemption would be in the public interest and consistent with traffic safety objectives because

many of these vehicles end up serving small cities and rural transit districts. These customers have limited budgets so the availability of an economical low floor bus allows them to prove fee service in areas where large buses are too costly to operate. The low floor feature of this vehicle allows the finished bus to readily serve the handicapped community.

In addition, "these buses operate in shuttle and light transit operations where high speed stops aren't commonly experienced." The company believes that rushing an anti-lock system into production might present a risk to safety.

How To Comment on Capacity's Application

If you would like to comment on Capacity's application, send two copies of your comments, in writing, to: Docket Management, National Highway Traffic Safety Administration, Room PL-401, 400 Seventh Street, SW, Washington, DC 20590, in care of the docket and notice number shown at the top of this document.

We shall consider all comments received before the close of business on the comment closing date stated below. To the extent possible, we shall also consider comments filed after the closing date. You may examine the docket in Room PL-401, both before and after that date, between 10 a.m. and 5 p.m.

When we have reached a decision, we shall publish it in the **Federal Register**.

Comment closing date: March 30, 1999.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: March 4, 1999.

L. Robert Shelton,
Associate Administrator for Safety
Performance Standards.

[FR Doc. 99-5971 Filed 3-9-99; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Announcement of University Transportation Centers Program Grant Solicitation

Authority: 49 U.S.C. 5505.

ACTION: Announcement of grant solicitation for University Transportation Centers (UTC) Program.

SUMMARY: The US Department of Transportation (DOT) plans to establish and maintain one University Transportation Center in each of the ten standard federal regions. The mission of the Centers is to advance U.S. technology and expertise in the many disciplines comprising transportation through the mechanisms of education, research and technology transfer at university-based centers of excellence.

To accomplish this purpose, DOT will provide up to \$1 million per Center for each of the five consecutive academic years starting in 1999. Each Center is required to obtain matching funds from non-federal sources in an amount at least equal to the DOT grant. DOT funding will be awarded in annual increments, on the basis of each Center's success in attaining the goals of the

program and subject to the availability of funding.

APPLICATION INSTRUCTIONS: Documents providing general program information and instructions for applying for a UTC grant are posted on the Internet at <http://utc.dot.gov/fy1999.html>. If you are unable to access the documents electronically, you may request a hard copy from the office designated below.

DATES: Applications must be received at the office designated below by 5:00 p.m. on Thursday, April 15, 1999.

ADDRESSES: Applications must be submitted to the following address: UTC Competition (Mail Code DRA-2), Research and Special Programs Administration, US Department of Transportation, 400 Seventh Street, SW, Room 8417, Washington, DC 20590-0001.

FOR FURTHER INFORMATION: Contact the UTC Program office by e-mail at utc@rspa.dot.gov; by phone at 202/366-4434; or by Fax at 202/366-3671.

Dated: March 3, 1999.

E. Fenton Carey,
Associate Administrator for Research,
Technology and Analysis.

[FR Doc. 99-5938 Filed 3-9-99; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33407]

Dakota, Minnesota & Eastern Railroad Corporation; Construction into the Powder River Basin¹

AGENCIES:

Lead: Surface Transportation Board.
Cooperating:

- U.S.D.A. Forest Service.
- U.S.D.I. Bureau of Land Management.
- U.S. Army Corps of Engineers.

ACTION: Notice of availability of final scope of study for the Environmental Impact Statement (EIS); Request for

¹ This case was formerly entitled Dakota, Minnesota & Eastern Railroad Corporation—Construction and Operation—in Campbell, Converse, Niobrara, and Weston Counties, WY, Custer, Fall River, Jackson, and Pennington Counties, SD, and Blue Earth, Nicollet, and Steele Counties, MN. By decision served May 7, 1998, the Surface Transportation Board shortened the title for the sake of simplicity. As discussed below, the environmental review of this project will also include the section of the line DM&E proposes to rebuild as part of this project. Environmental review of the rebuild portion of the line would include the counties of Winona, Olmsted, Dodge, Steele, Waseca, Blue Earth, Brown, Redwood, Lincoln, and Lyon in Minnesota; Brookings, Kingsbury, Beadle, Hand, Hyde, Hughes, Stanley, Haakon, Jackson, Pennington, and Fall River in South Dakota.

comments on (1) the modified proposed action, referred to as Alternative C, and (2) the City of Rochester, Minnesota's south bypass proposal.

SUMMARY: On February 20, 1998, the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) filed an application with the Surface Transportation Board (Board) for authority to construct and operate new rail line facilities in east-central Wyoming, southwest South Dakota, and south-central Minnesota. The project involves construction of new rail line totaling 280.9 miles. Additionally, DM&E proposes to rebuild 597.8 miles of existing rail line along its current system to standards acceptable for operation of unit coal trains. Because the construction and operation of this project has the potential to result in significant environmental impact, the Board's Section of Environmental Analysis (SEA) determined that the preparation of an Environmental Impact Statement (EIS) is appropriate. SEA held 3 agency and 12 public scoping workshops in 14 cities as part of the EIS scoping process, as discussed in the Notice of Intent to Prepare an EIS, Request for Comments on the Proposed EIS Scope, and Notice of Scoping Meetings published by the Board on March 27, 1998. Because of public interest in the project, workshops in Newcastle, Wyoming and Winona, Minnesota, not originally scheduled, were added to provide additional opportunities for public participation in the scoping process. Comment forms and the draft scope of study (draft scope) were provided to workshop attendees. On August 7, 1998, the Board published a Revised Notice of Intent to Prepare an EIS, indicating that the U.S.D.A. Forest Service, U.S.D.I. Bureau of Land Management, and the U.S. Army Corps of Engineers would be participating as cooperating agencies. The scoping comment period, originally scheduled to conclude on July 10, 1998, was extended until September 8, 1998. However, comments filed after September 8, 1998 have been accepted and considered in this final scope of study (final scope) of the EIS. Changes made to the draft scope are detailed in the Response to Comments section of this notice.

In addition to issuing the final scope of the EIS, the Board and the cooperating agencies are providing a 30 day comment period for interested parties to submit comments on two new proposed alternatives: (1) the Modified Proposed Action, referred to as Alternative C, and (2) the City of Rochester, Minnesota's South Bypass Proposal. Both these new alternatives

are discussed in detail below, along with information on how to submit written comments. This 30 day comment period is in addition to the comment period that will be provided on all aspects of the Draft EIS (DEIS) when that document is made available.

FOR FURTHER INFORMATION CONTACT:
Ms. Victoria Rutson, SEA Project Manager, Powder River Basin Expansion Project, toll free at 1-877-404-3044.

Mr. Steve Thornhill of Burns & McDonnell, SEA's third party contractor, at (816) 822-3851.

Ms. Wendy Schmitzer, U.S.D.A. Forest Service, (307) 358-4690.

Mr. Bill Carson, U.S.D.I. Bureau of Land Management, (307) 746-4453.

Mr. Jerry Folkers, U.S. Army Corps of Engineers, (402) 221-4173.

SUPPLEMENTARY INFORMATION:

Background

The proposed action, referred to as the Powder River Basin Expansion Project, would involve the construction and operation of 280.9 miles of new rail line and the rebuilding of 597.8 miles of existing rail line by DM&E, as described in the February 20, 1998 application for construction and operation authority for the project filed by DM&E and in the March 27, 1998 Notice of Intent to Prepare an EIS published in the *Federal Register* by the Board.

The Powder River Basin Expansion Project, as set forth by DM&E in its application filed with the Board, would involve the construction and operation of new rail facilities designed to provide access for a third rail carrier to serve the Powder River Basin's coal mines for transport of coal eastward and increase the operational efficiency of DM&E. New rail construction would include approximately 262.03 miles of rail line extending off DM&E's existing system near Wasta, South Dakota, extending generally southwesterly to Edgemont, South Dakota, and then westerly into Wyoming to connect with existing coal mines² located south of Gillette, Wyoming. This portion of the new construction would traverse portions of Custer, Fall River, and Pennington Counties, South Dakota and Campbell, Converse, Niobrara, and Weston Counties, Wyoming.

New rail construction would also include an approximate 13.31 mile line segment at Mankato, Minnesota, within Blue Earth and Nicollet Counties. DM&E currently operates over trackage on both sides of Mankato, accessed by trackage

²Caballo, Belle Ayr, Caballo Rojo, Cordero, Coal Creek, Jacobs Ranch, Black Thunder, North Rochelle, North Antelope, Rochelle, and Antelope.

rights on rail line owned and operated by Union Pacific Railroad Company (UP). The proposed Mankato construction would provide DM&E direct access between its existing lines and avoid operational conflicts with UP.

The final proposed segment of new rail construction would involve a connection between the existing rail systems of DM&E and I&M Rail Link. The connection would include construction and operation of approximately 2.94 miles of new rail line near Owatonna, Steele County, Minnesota. The connection would allow interchange of rail traffic between the two carriers.

In order to transport coal over the existing system, DM&E proposes to rebuild approximately 597.8 miles of rail line along its existing system. The majority of this, approximately 584.95 miles, would be along DM&E's mainline between Wasta, South Dakota, and Winona, Minnesota. This rebuild would cross Winona, Olmsted, Dodge, Waseca, Brown, Redwood, Lincoln, and Lyons Counties, as well as Steele, Blue Earth, and Nicollet Counties in Minnesota, and Brookings, Kingsbury, Beadle, Hand, Hyde, Hughes, Stanley, Haakon, and Jackson Counties in South Dakota. An additional approximate 12.85 miles of existing rail line between Oral and Smithwick, in Fall River County, South Dakota, would also be rebuilt. Rail line rebuilding would include rail and tie replacement, additional sidings, signals, grade crossing improvements, and other systems.

DM&E plans to transport coal as its principal commodity. However, shippers desiring rail access could ship other commodities in addition to coal over DM&E's rail line. Existing shippers along the existing DM&E system would continue to receive rail service.

Environmental Review Process

The Board is the lead agency, pursuant to 40 CFR 1501.5(c). SEA is responsible for ensuring that the Board complies with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321-4335, and related environmental statutes. SEA will supervise the preparation of the EIS. The U.S. Department of Agriculture Forest Service (USFS), the U.S. Department of Interior Bureau of Land Management (BLM), and the U.S. Army Corps of Engineers (COE) are cooperating agencies, pursuant to 40 CFR 1501.6. If the cooperating agencies find the EIS adequate, they will base their respective decisions on it. The EIS should include all of the information necessary for decisions by the Board,

USFS, BLM, and COE (collectively, the agencies).

On December 10, 1998, the Board found that DM&E had satisfied the transportation-related requirements of 49 U.S.C. 10901. In issuing its decision, the Board stated that it had considered only the transportation aspects of DM&E's proposed project. Environmental aspects would be considered after the completion of the environmental review process. Therefore, the Board emphasized, no final decision would be issued until all statutory requirements—both transportation and environmental—were satisfied. Construction cannot begin until the cooperating agencies have issued their decisions and the Board has issued its final decision.

The NEPA environmental review process is intended to assist the agencies and the public to identify and assess the potential environmental consequences of a proposed action before a decision on the proposed action is made. The agencies have developed and made available a draft scope of the EIS and provided a period for submission of written comments on it. At this time, the agencies are issuing this final scope of the EIS. In addition, the agencies are requesting comments on two new proposed alternatives: (1) the Modified Proposed Action, referred to as Alternative C, and (2) the City of Rochester's South Bypass Proposal. This comment period is in addition to the comment period that will be provided on all aspects of the DEIS when that document is made available.

Specifically, DM&E has developed a Modified Proposed Action, referred to as Alternative C. This proposal includes an alternative alignment in Wyoming and South Dakota for the mainline extension developed by DM&E in response to environmental issues and concerns raised by agencies, local landowners, and other interested parties. The Board and the cooperating agencies are seeking views of all commenters in order to ensure public input in the assessment of potential environmental impacts of this alternative.

Also, the City of Rochester has submitted a South Bypass Proposal to construct a rail line that would route rail traffic south around that city. The Board and the cooperating agencies are seeking additional information to assist in determining whether the bypass proposal is a reasonable and feasible alternative designed to meet the purpose and need of the applicant's proposed action. The Board and the cooperating agencies will consider the comments in determining whether Rochester's South

Bypass Proposal is a reasonable and feasible alternative and will set forth their conclusions in the DEIS.

As stated, the agencies will prepare a DEIS for the proposed project. The DEIS will address those environmental issues and concerns identified during the scoping process and detailed in the scope of study. It will also contain a reasonable range of alternatives to the proposed action and recommended environmental mitigation measures.

The DEIS will be made available upon its completion for public review and comment. A Final EIS (FEIS) will then be prepared reflecting the agencies' further analysis and the comments on the DEIS. In reaching their future decisions in this case, the Board and each cooperating agency will take into account the full environmental record, including the DEIS, the FEIS, and all public and agency comments received.

Consistent with its jurisdiction under the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995), the Board would normally only conduct an environmental analysis of the new construction and the increase in operations over DM&E's existing system. However, in this instance, the EIS analysis will also address construction related impacts associated with the rebuilding of DM&E's existing mainline from the point of connection with the new construction segments between Wasta, South Dakota and Winona, Minnesota. Because the COE, which as discussed above is a cooperating agency, requires such analysis, construction related impacts along the rail line to be rebuilt, including sidings and yard facilities, will be analyzed in this EIS to the extent necessary to satisfy the COE's permitting requirements under the Clean Water Act.

Proposed Action and Alternatives

Based on analysis conducted to date and comments received during the scoping process, the agencies have determined that the reasonable and feasible alternatives³ that will be discussed in the EIS are:

³ Under NEPA, an applicant's goals are important in defining the range of feasible alternatives. NEPA does not require discussion of an alternative that is not reasonably related to the purpose of the proposal considered by the agencies. *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190 (D.C. Cir. 1991). Here, the proposed project is intended to facilitate the delivery of coal from the Powder River Basin of Wyoming eastward by DM&E. During scoping, numerous comments were received suggesting that the EIS evaluate alternative energy sources, such as nuclear, hydroelectric and wind, as an alternative to burning of coal. These alternatives, while offering legitimate means of generating energy, do not advance the applicant's goals of efficiently transporting coal and upgrading its current rail system, and therefore, will not be evaluated in the EIS.

A. South Dakota/Wyoming New Rail Line Extension

(1) The "No Action Alternative," referred to as Alternative A. This alternative to include the no build alternative as well as the no action on federal lands alternative.

(2) The "Proposed Action," referred to as Alternative B. This alternative includes DM&E's preferred alternative as identified in its application to the Board, but modified in response to operational constraints discovered near Wall, South Dakota.⁴

(3) The "Modified Proposed Action," referred to as Alternative C. This alternative would include an alternative alignment in Wyoming and South Dakota for the mainline extension developed by DM&E in response to environmental issues and concerns raised by agencies, local landowners, and other interested parties. Alternative C is designed to minimize potential environmental impacts. This alignment was not developed until after DM&E filed its application with the Board and after scoping workshops had been held. Therefore, this alignment has not yet been presented publicly on a broad scale for review and comment.⁵ To facilitate public review and comment regarding this alternative, the agencies will provide an additional 30 day comment period. A general description of the alignment for this alternative, together with a map, is set forth below (see "Description of Alternative C, the

⁴ DM&E noted in its application that modifications to the existing system near Wall would likely be required as part of the proposed project. However, no modifications were specifically indicated at the time DM&E filed its application with the Board. As a result of more detailed engineering, DM&E has since determined that grade and curve considerations at this location would be prohibitive for the operation of unit coal trains and has proposed a modified plan to eliminate these problems. This new construction along new rail line right-of-way would be utilized by Alternatives B, C, or D. The new alignment would branch from DM&E's existing system approximately 3 miles south of Wasta, just north of where the proposed new construction would begin. It would curve eastward, cross the Cheyenne River, turn northward to near Interstate 90. It would generally parallel I-90, approximately 0.5 mile to the south. Approximately 5 miles west of Wall the alignment would extend away from I-90, then turn northeasterly, crossing I-90 approximately 1.5 miles west of Wall. After crossing I-90, the alignment would curve to the east, joining with the existing system approximately 0.25 mile north of Wall.

⁵ The applicant conducted numerous site visits and public meetings during the development of this alternative, including meeting with landowners potentially affected by this alignment and Federal and state agencies to discuss adjustments and ways to minimize impacts on environmental resources and individual landowners. Thus, some individuals, including potentially affected landowners, are already aware of the Alternative C alignment.

Modified Proposed Action"). Copies of maps of this alignment may be obtained through written request to the Board or by contacting the toll-free environmental hotline at 1-877-404-3044.

(4) The "existing transportation corridors alternative," referred to as Alternative D. This alternative includes:

- Utilization of the existing DM&E line westward to Rapid City, then southward to Crawford, Nebraska, then northward parallel to the existing Burlington Northern Santa Fe Railway Company (BNSF) line to Donkey Creek Junction, then south to the joint BNSF/UP line (Joint Line), following the Joint Line into the Powder River Basin and connecting to the mines, referred to as Alternative D1. This alternative would involve utilization and rebuilding of existing DM&E rail line and new construction immediately adjacent to the existing BNSF and Joint Lines.

- Utilization of the existing DM&E line westward to Rapid City, then southward to Crawford, Nebraska, construction of new line westward to Crandall, Wyoming along a previously abandoned UP rail line right-of-way, then northward parallel to the existing into the Powder River Basin and accessing the mines, referred to as Alternative D2. This alternative would involve utilization and rebuilding of existing DM&E rail line and new construction between Crawford and Crandall and immediately adjacent to the existing Joint Line.

- Utilization of the existing DM&E line westward to Rapid City, then southward to Crawford, Nebraska, then northward parallel to the existing BNSF line to near Newcastle, Wyoming, turning westward to parallel State Highway 450 to the Joint Line, then following the Joint Line north and south to access the mines, referred to as Alternative D3. This alternative would involve utilization and rebuilding of existing DM&E rail line and new construction parallel to the BNSF line northward from Crawford, new construction westward along State Highway 450, and new construction along the existing Joint Line to access the mines.

- Construction of new rail line extending from DM&E's existing line near Wasta, South Dakota south and west to Edgemont, South Dakota⁶ and then northward parallel to the existing BNSF line to near Newcastle, Wyoming,

⁶ The new construction portion of this alternative would involve the portions of both Alternative B and C between their points of diversion from DM&E's existing line near Wasta to where they would begin to parallel the existing BNSF line northwest of Edgemont.

turning westward to parallel State Highway 450 to the Joint Line, then following the Joint Line north and south to access the mines, referred to as Alternative D4. This alternative would involve new construction along new rail line right-of-way between Wasta and Edgemont, new construction parallel to the BNSF line northward from Edgemont, new construction westward along State Highway 450, and new construction along the existing Joint Line to access the mines.

- Utilization of the existing DM&E line westward to Alto, South Dakota, approximately 10 miles east of Pierre, South Dakota, then southward to the former Milwaukee Road rail line right-of-way (now Dakota Southern Rail owned and operated by the State of South Dakota) near Draper, South Dakota, then westward utilizing the State-owned rail line right-of-way and grade to the point this railbed intersects DM&E's proposed new construction alignment approximately 2 miles south of State Highway 44 in Pennington County, South Dakota, then following the alignment proposed for the new construction into the Powder River Basin, referred to as Alternative D5. This alternative would involve approximately 40 miles of new construction, including a new rail bridge over the Missouri River, and the rebuilding of approximately 100 miles of former rail line on the existing State-owned right-of-way. This alternative would eliminate the need for approximately 30 miles of new construction south of Wasta and around Wall, South Dakota and the rebuilding of approximately 100 miles of existing DM&E rail line between Pierre and Wasta.

B. Rail Line Construction on New Right-of-Way Along DM&E's Existing Rail System

UP Bypass at Mankato, Minnesota

(1) The "No Action Alternative," referred to as Alternative M1.

(2) The "Proposed Action," or "Southern Alternative," referred to as Alternative M2. This alternative would include the alternative identified by DM&E as the preferred alternative in its application to the Board and involves construction of new rail line in a loop south of Mankato to connect DM&E trackage on the west and east sides of Mankato.

(3) The "Existing Rail Corridor Alternative," or the "Middle Alternative," referred to as Alternative M3. This alternative would include construction of a new rail line connecting the ends of DM&E's existing

system on either side of Mankato generally along and within an existing rail corridor through Mankato. This corridor is currently only occupied by UP and contains the UP line DM&E must currently operate over, via trackage right, for access between its existing rail lines east and west of Mankato.

(4) The "Northern Alternative," referred to as Alternative M4. This alternative would include an alignment connecting the two portions of DM&E's existing system through construction of new rail line in a loop north of Mankato and North Mankato.

C. I&M Connection at Owatonna, Minnesota

(1) The "No Action Alternative," referred to as Alternative O1.

(2) The "Proposed Action," referred to as Alternative O2. This alternative would include the alternative identified by DM&E as the preferred alternative in its application to the Board and involves construction of a connecting rail line to allow interchange of rail traffic between DM&E and I&M Rail Link.

(3) The alternative alignment, referred to as Alternative O3. This alternative would include another alignment to the construction alternative proposed by DM&E in its application to the Board. It involves construction of a connecting rail line to allow interchange of rail traffic between DM&E and I&M Rail link approximately one mile west of Alternative O2.

In addition to the alternatives discussed above, the EIS will evaluate other subsequently identified alternatives determined reasonable and feasible in light of the purpose and need for the proposed action. This may include the City of Rochester's South Bypass Proposal.

Public Participation

Scoping workshops were attended by over 1,000 people. Over 600 scoping comment forms and well over 1,000 letters raising environmental issues were received.

As part of the environmental review process to date, the agencies have conducted broad public outreach activities to inform the public about DM&E's proposal and to facilitate public participation. The agencies have consulted and will continue to consult with Federal, state, and local agencies, American Indian Tribal governments, affected communities, landowners, and all interested parties to gather and disseminate information about the proposal. In addition, comments continue to be accepted on all aspects of the environmental review process

and potential environmental impacts. Moreover, the agencies are specifically requesting comments in this final scope on the Modified Proposed Action, referred to as Alternative C, and the City of Rochester's South Bypass Proposal.

The agencies continue to encourage extensive public participation in the EIS process. Comments have been received and will continue to be accepted throughout the environmental process. To further assist in obtaining information about the environmental review process, the agencies have provided a toll-free environmental hotline (1-877-404-3044).

Response to Comments

The agencies reviewed and considered all comments received in their preparation of this final scope of the EIS. The final scope reflects changes made as a result of comments received addressing environmental issues and concerns, as well as comments on the draft scope, previously distributed at public scoping workshops and published in the *Federal Register*. Other changes in the final scope were made for clarification or as a result of additional analysis. Additions and modifications reflected in the final scope include:

- Analysis of construction impacts resulting from the rebuilding of the applicant's existing system, including sidings and yard facilities (with alternative locations). Over 70 written and numerous oral comments requesting that this analysis be conducted were received. The rebuilding of DM&E's existing line, and the construction of sidings and yard facilities on DM&E's existing right-of-way, would not normally be included in an EIS prepared by the Board. However, as discussed above, because one of the cooperating agencies—the U.S. Army Corps of Engineers (COE)—requires such analysis, construction related impacts along the rail line to be rebuilt will be analyzed in this EIS to the extent necessary to satisfy the COE's permitting requirements under the Clean Water Act.

- Sidings and yard facilities (with alternative locations) for the new construction. The draft scope did not explicitly note that these facilities would be addressed in the EIS. As a point of clarification, sidings, yards, and other new rail facilities along the new construction portion of the project will be included in the EIS analysis.

- Analysis of air quality impacts related to fugitive coal dust. Over 350 written and numerous oral comments were received concerning the potential impacts of fugitive coal dust as it

applies to both air quality and fire hazard. In response, the agencies have added the analysis of these potential impacts from coal dust to the final EIS scope.

- Analysis of downline impacts. The draft scope indicated that the EIS would address the potential environmental impacts associated with increased levels of rail traffic above the Board's thresholds, which would include DM&E's existing mainline between Wasta, South Dakota, eastward to its termination at Goodview, Minnesota. Because of the proximity of the communities of Goodview and Winona, Minnesota, the reasonably foreseeable potential impact of the project on them due to their location at the terminus of DM&E's system, and the numerous requests to include them in the analysis, the EIS will be expanded to include an appropriate analysis of those portions of the UP and Canadian Pacific (CP) lines potentially impacted by this project within the communities of Goodview and Winona, Minnesota.

- Analysis of increases in barge traffic. In its application, DM&E indicated a portion of the coal transported by the proposed project could be available for delivery by barge to utilities along the Mississippi and Ohio Rivers and within its identified core market area. Subsequently, during scoping, several written and oral comments asked that the impacts of increased barge traffic on the Mississippi River, specifically the Upper Mississippi River National Fish and Wildlife Refuge (Refuge), as a result of DM&E's proposal, be addressed in the EIS.

Based on more information from the applicant concerning potential impacts to barge traffic from DM&E's anticipated rail operations, it appears that barge loading facilities currently available could not accommodate unit coal trains of the type DM&E would be operating. Additionally, DM&E has no estimates of the reasonably foreseeable amount of coal to be transported by barge, as this would depend on market demand from a specific segment of its identified core market. Any projections of potential coal volumes to be transported by barge, therefore, are speculative at this time. In addition, such projections are dependent on the development of facilities capable of loading barges from unit coal trains.⁷

⁷ Should a barge facility be developed, it would likely require an environmental review under NEPA. Such a review would likely require evaluation of the impacts of increased barge traffic on the river, including impacts to the Refuge, resulting from the development and operation of such a facility.

Because there is a high level of uncertainty about both the future development of a barge loading facility and the amount of coal that DM&E would transload to barge, any related impact to the Mississippi River generally and the Refuge specifically does not meet the "reasonably foreseeable" standard set by the Council on Environmental Quality (CEQ) for impacts analysis. See 40 CFR 1508.8; Forty Questions No. 18. Increases in barge traffic as a result of DM&E's proposal, therefore, will not be evaluated in this EIS.

- Vehicular traffic levels for evaluation. The air quality and transportation systems sections of the draft scope indicated grade crossings with vehicular traffic levels of 5,000 vehicles per day or more would be included in these analyses. In prior cases, this level of traffic has been considered by the lead agency, the Board, to be a conservative and appropriate baseline. Over 300 written and numerous oral comments were received pertaining to vehicular delay and access, particularly as they apply to the issues of air quality and transportation. A few commenters requested reduction in the traffic levels for evaluation in the EIS. The Board, in consultation with its cooperating agencies, has determined that a grade crossing traffic volume of 5,000 vehicles per day is appropriate for EIS evaluation. However, in response to concerns that have been raised, the Board will expand its analysis of impacts at grade crossings to specific crossings of less than 5,000 vehicles per day if unique circumstances discovered during the course of the environmental review process make it appropriate to include the crossings.

- Safety analysis. Based on comments received, the agencies have determined the EIS analysis will include the potential safety impacts of the project on affected facilities, such as the Federal Medical Center in Rochester, Minnesota.

- Analysis of vibration. Over 200 written and numerous oral comments were received expressing concern for the potential impacts resulting from train induced vibration. In response to these comments the agencies have revised the final scope of the EIS to include an analysis of the potential impacts of vibration, including impacts to structures, sensitive equipment, and alarm systems.

- Analysis of aesthetics. The analysis of aesthetics in the EIS will include the potential impacts of the proposed new rail line construction on areas determined to be of high visual quality, as discussed in the draft scope. Based

on comments received, the agencies clarify that the following criteria will be considered in evaluating areas of high visual quality: perception of isolation, feeling of vastness, and the wide open nature of the area.

- Quality of life issues. Several written and numerous oral comments were received regarding various potential quality of life impacts, including division of communities, isolation of residences, access to destinations, annoyance from increased noise and vibration, and traffic delays. The final scope has been clarified to include those quality of life issues involving division of communities, isolation of residences, access to destinations and similar concerns in the socioeconomic section. Annoyance from increased noise and vibration will be addressed in the noise section and annoyance from traffic delays will be covered within the transportation systems section.

- Distinction between public versus private lands. The agencies have clarified the land use section of the final scope to define the evaluation of existing land use patterns to include identification of private and public lands and the potential project impacts related to both.

- Potential impacts to utilities. The agencies have added to the land use evaluation of the final scope of the EIS an evaluation of potential project impacts on utilities, including pipelines, electrical lines, telephone lines, and any others in the vicinity of the project.

- Evaluation of mineral resources. The geology and soils section of the final scope of the EIS has been expanded to include an evaluation of the potential impacts of the project on mineral resources within the project area.

- Placement of paleontological resources evaluation. The draft scope included the evaluation of potential

project impacts to paleontological resources within the cultural resources section. Based on comments received during scoping, the agencies have moved the discussion of paleontological resources to the geology and soils section of the final scope.

Additional Comment Period on the "Modified Proposed Action," Referred to as Alternative C and City of Rochester's South Bypass Proposal

As stated above, in this final scope the agencies are providing an opportunity for all interested parties to submit their views during a 30 day comment period on the potential environmental impacts of the "Modified Proposed Action," referred to as Alternative C. This comment period is in addition to the further comment period that will be provided on all aspects of the DEIS when it is issued. With regard to the City of Rochester's South Bypass Proposal, the agencies will consider the additional information submitted during the 30 day comment period to make a final determination of whether the South Bypass Proposal is a reasonable and feasible alternative designed to meet the purpose and need of the applicant's proposed action. The agencies have provided a general description of both the Modified Proposed Alternative, known as Alternative C, and the City of Rochester's South Bypass Proposal below:

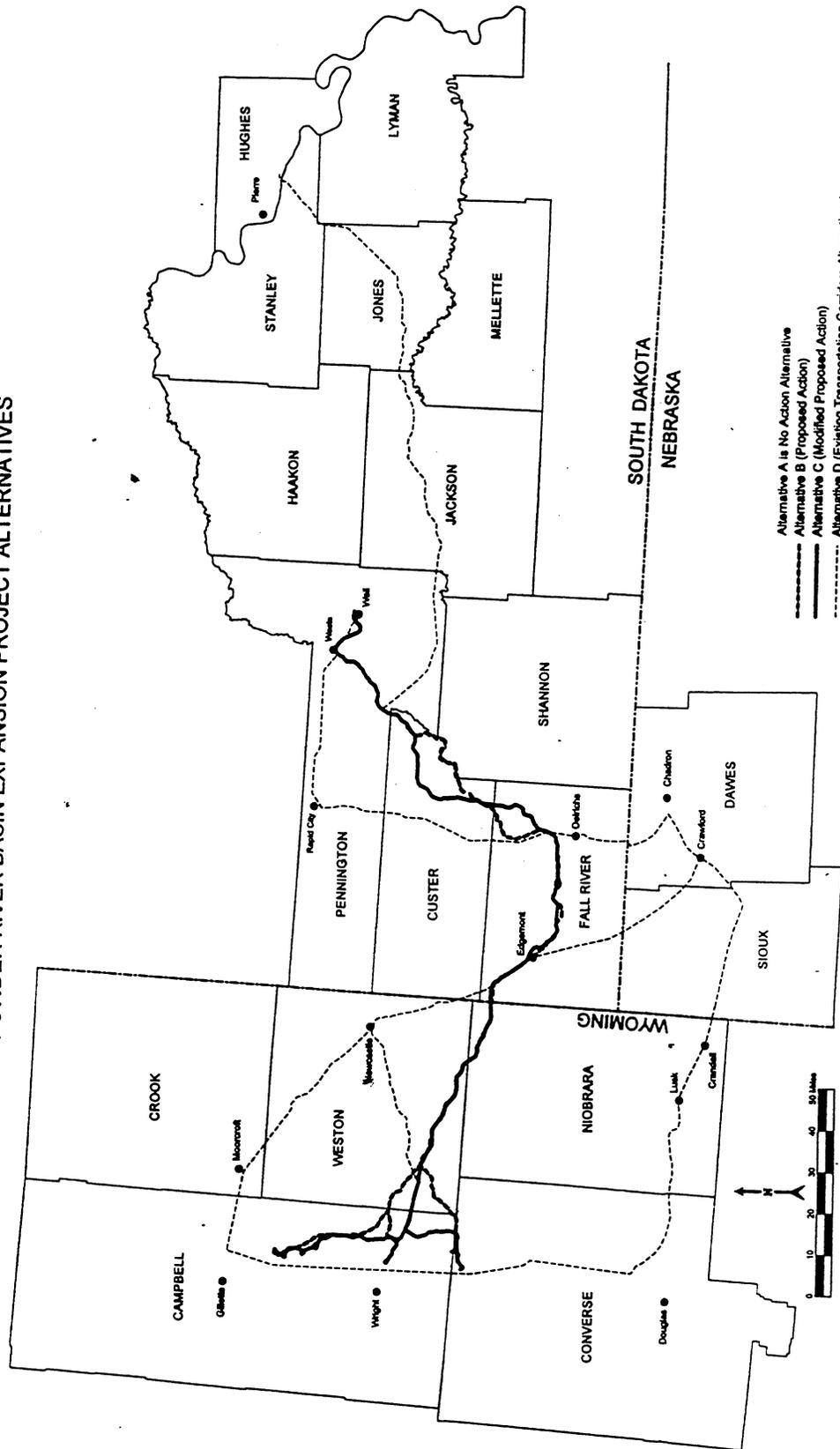
Description of Modified Proposed Action," Referred to as Alternative C

Alternative C, the Modified Proposed Action, would diverge from DM&E's existing system approximately three miles south of Wasta, South Dakota. It would generally follow the Cheyenne River along the sideslope of the floodplain on the west side of the river. It would cross State Highway 44 approximately 2 miles west of where the highway crosses the Cheyenne River

and continue southward along Spring Creek for approximately 10 miles. Alternative C would cross Spring Creek where the creek bends to the west, with the rail line alternative extending in a generally westward direction for approximately 12 miles before turning southward. It would extend southward for approximately 16 miles, crossing the Cheyenne River just south of the Custer-Fall River County Line. Alternative C would continue southward for 5 miles, then curve westward to join with DM&E's existing line just north of Smithwick, South Dakota. It would utilize this existing rail line for approximately four miles, then branch from the existing line, extending westward for approximately 28 miles, then curve northward, passing approximately 2 miles east of Edgemont, South Dakota. Approximately 2 miles north of Edgemont, Alternative C would parallel the existing BNSF for approximately 13 miles before crossing over the BNSF line and extending westward into Wyoming, following the Cheyenne River for approximately 11 miles. After crossing U.S. Highway 85, Alternative C would extend in a generally northwest direction, crossing Black Thunder Creek approximately 4 miles south of where State Highway 450 crosses Black Thunder Creek. Alternative C would extend westward, generally parallel to and south of State Highway 450, along Little Thunder Creek. Approximately 4 miles east of the Jacob's Ranch Coal Mine, Alternative C would split and one branch would extend north along the east side of the region's coal mines, converging with the existing joint rail line in the vicinity of the Belle Ayr and Caballo Rojo mines. The southern branch would extend southward, also along the east side of the areas coal mines, accessing the North Antelope, Rochelle, and Antelope Coal Mines.

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DM&E RAILROAD CORPORATION
POWDER RIVER BASIN EXPANSION PROJECT ALTERNATIVES



BILLING CODE 4915-00-C

City of Rochester's South Bypass Proposal

On January 6, 1999, the City of Rochester, Minnesota (the City) requested that SEA consider a south bypass corridor as an alternative to DM&E's proposed plan to rehabilitate its existing rail line and operate additional rail traffic, primarily coal trains, through Rochester. As part of its submission, the City has attached an engineering report commissioned jointly by the City and Olmsted County.⁸ The report, entitled *Mitigation of Safety and Environmental Issues Associated with The Dakota Minnesota & Eastern Railroad's Proposed Expansion Through the City of Rochester and Olmsted County, Minnesota*, contains information on the southern bypass route and proposed mitigation for the existing DM&E rail corridor.

Description of Proposed South Bypass

The report states that its intent is to "assess the impacts the additional train traffic would have on the communities and the environment within the county and, if appropriate, recommend reasonable, effective, and practical alternatives for mitigation of these impacts." Report p. 2. To that end, the report states that after assessing the

⁸ The report was prepared by the engineering firms of Toltz, Duvall, Anderson and Associates of St. Paul, Minnesota and its subconsultant, Black and Veatch located in Overland, Kansas. A copy has been placed in the environmental record in this case. We urge interested parties or members of the public to review the report itself. We explain below how to obtain a copy of the report.

increased potential for train/vehicle collisions at grade crossings if DM&E's proposal were to be approved, several options for mitigating these potential safety impacts were considered, including construction of a depressed trainway, construction of a tunnel beneath the City, construction of a north bypass, and construction of a south bypass. According to the report, the trench, tunnel, and north bypass options were found not to be viable so the report focused on a south bypass and an existing corridor improvement option.⁹ Report p. 6.

The report describes the south bypass as follows: the route would be 34.1 miles long and would diverge south from DM&E's mail track in Dodge County at milepost 61.1, approximately .8 miles west of the Olmsted County line west of Byron, Minnesota. The route then would travel due south approximately 9.5 miles through portions of Salem and Rock Dell Township. The line would then travel generally eastward through High Forrest, Marion, Pleasant Grove, and Eyota Townships. The line would reconnect with DM&E's existing system at milepost 37.5, approximately 8.2 miles west of the east Olmsted County line.

According to the report, the south bypass would require acquisition of approximately 887 acres for a 200-foot wide new right-of-way. Twelve

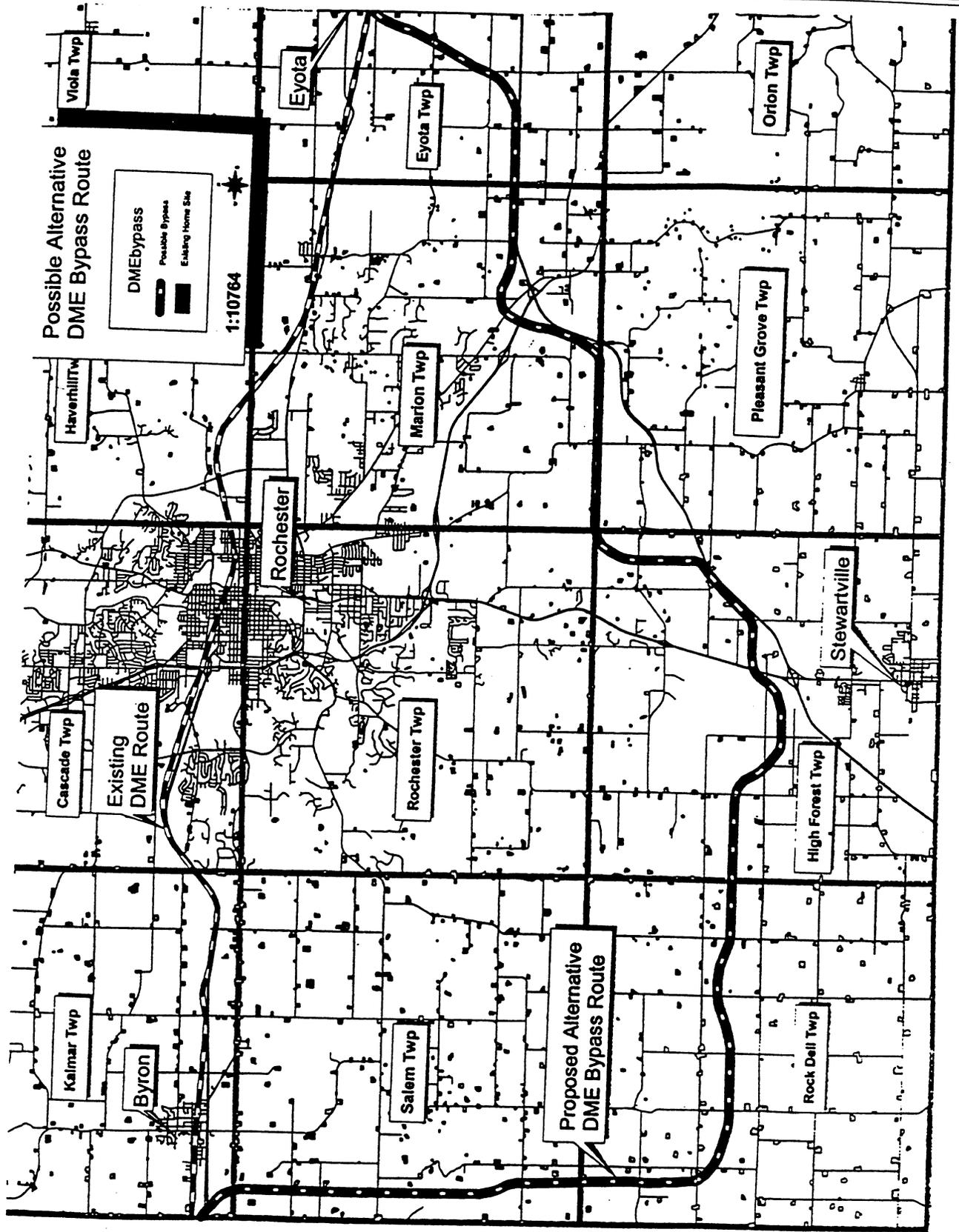
⁹ The report notes, however, that the City is continuing to gather data on the feasibility of the tunnel option. See p. 6

households would be located within 500 feet of the rail centerline. Fifty-one households would be within 1200 feet of the centerline. The bypass would cross forty-two intermittent creeks or waterways, none of which are major according to the report's engineers. Thirty-eight roadways (seventeen of which are paved and eighteen of which have average daily traffic counts less than 100 vehicles) would be crossed.

The report also sets forth details of design criteria, including curves and profile grades, track specifications, embankment and side slopes, bridges, highway crossings and signals, fencing, cut and fill requirements, wetlands, and endangered species. Report pp. 7-13. In addition, the report includes an estimated cost of \$115,334,000 for acquisition and construction of the south bypass. Report p. 12.

The report concludes that the south bypass would effectively mitigate adverse impacts to the City and Olmsted County by avoiding population areas. In addition, the report states that the bypass would present operational advantages to DM&E, such as improved curvature, a wider right-of-way, and increased opportunities for future development and additional trackage. Report p. 14. The report notes that the south bypass route would not require DM&E to abandon service to its existing customers, and that light local rail traffic could continue over DM&E's present line through the City. Report p. 15.

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City of Rochester's Proposed Mitigation of DM&E's Existing Corridor

The report also proposes a number of improvements to DM&E's existing corridor through the City¹⁰ designed to mitigate potential environmental impacts if DM&E's proposal were to be approved.¹¹ The improvements include replacing all of the main track with 136-lb continuously welded rail, replacing all poor or marginal timber cross ties, replacing all turnouts along the main track, installing power switch machines and switch heaters at all heavily used locations, replacing all timber trestle bridges, replacing or strengthening all of the steel bridges to support heavier axle loads, cleaning and installing additional rock ballast and re-profiling the existing line, cleaning drainage ditches and repairing culverts and marginal embankments, and replacing all at grade crossing surfaces following reconstruction of the track.

The report goes on to recommend additional work to reduce potential safety, environmental, congestion, and quality of life problems. Moreover, the report recommends construction of eleven separated grade crossings, closure of seven grade crossings, and protection with train activated flashing light signal and automatic gate arms at the seventeen remaining crossings. Other recommended mitigation includes sound barrier walls, fencing, and pedestrian crossings. The report includes an estimated cost of \$119,300,000 for the recommended mitigation of DM&E's existing corridor. Report p. 21.

Public Participation and Request for Comments

Pursuant to NEPA, the EIS must explore and evaluate a reasonable range of alternatives designed to meet the purpose and need of the proposal. If alternatives have been eliminated from detailed study, the EIS must briefly discuss why these alternatives have been discarded. See 40 CFR 1502.14(a); Forty Questions No. 1(a). CEQ's guidance states that "[r]easonable alternatives include those that are practical or feasible from the technical and economic standpoint and using commonsense, rather than simply

¹⁰ The report defines the corridor as DM&E's 31.0 mile long main track traveling east-west through Olmsted County and .8 miles located in Dodge County. Report p. 15.

¹¹ The DEIS will assess potential environmental impacts that would result from rebuilding DM&E's existing line and operating a maximum of 37 trains, including 34 unit coal trains over the rebuilt line. The DEIS will assess proposals for mitigation of impacts and independently develop recommended mitigation measures.

desirable from the standpoint of the applicant." Forty Questions No. 2a.

The City's submission contains sufficient information for the Board, in consultation with its cooperating agencies, to make a preliminary determination that the south bypass may be a feasible alternative routing. However, we do not yet have the benefit of the applicant's views, nor those of the affected members of the public or other interested parties as to the feasibility of the south bypass, or whether it would simply shift to different communities and populations the potential environmental consequences of the applicant's proposed route. To ensure that the agencies have as much information as possible on the south bypass in preparing the DEIS, SEA has decided to provide an opportunity for interested parties and members of the public to submit comments on the feasibility of the City's proposal prior to the issuance of the DEIS.¹²

In addition, as discussed above, the agencies are seeking comments on the potential environmental impacts of the "Modified Proposed Action," referred to as Alternative C.

Comments on Alternative C and on the City's proposal can be submitted to the Surface Transportation Board within 30 days of publication of the final scope and request for comments in the Federal Register. Comments should be sent to: Office of the Secretary, Case Control Unit, STB Finance Docket No. 33407, Surface Transportation Board, 1925 K Street, NW, Washington, D.C. 20423-0001.

To ensure proper handling of your comments, you must mark your submission: Attention: Elaine K. Kaiser, Chief, Section of Environmental Analysis, Environmental Filing.

The DEIS will include an appropriate discussion of the south bypass and recommended mitigation and a determination as to whether the bypass would be a reasonable and feasible alternative. The public then will have the opportunity to review and comment on these conclusions regarding the south bypass during the comment period on the DEIS. The DEIS will contain information on the agencies' conclusions regarding the City of Rochester's South Bypass Proposal. An opportunity for further comment will be provided at that time.

¹² Detailed information, including maps, of Rochester's proposed south bypass and mitigation of DM&E's existing corridor may be obtained from: The Rochester-Olmsted County Department of Planning, 2122 Campus Drive, SE, Rochester, MN 55904, (507) 285-8232.

Agency Actions

Based on CEQ's and each agencies' regulations implementing NEPA, the draft scope, oral and written comments received, and all other information available to date, the agencies have prepared this final scope of the EIS. This final scope of the EIS will be distributed to all Parties of Record, interested parties and American Indian Tribal governments, and appropriate Federal, state, and local agencies.

Based on the agencies' environmental analysis, review of all information available to-date, and consultations with appropriate American Indian Tribal governments and agencies, the agencies will prepare the DEIS. The DEIS will address relevant environmental concerns, as generally described in this final scope of the EIS and recommend appropriate environmental mitigation. The agencies will afford an opportunity for public comments on the DEIS. Once comments have been received and assessed, the agencies will issue the FEIS, which will respond to comments and, if appropriate, set forth additional analysis and information. Following the close of the environmental record, the Board and each of the cooperating-agencies will then issue final decisions on the proposed action.

Environmental Impact Analysis

Analysis in the EIS will address, as appropriate, the potential environmental impacts of proposed activities associated with the construction and operation of DM&E's new rail facilities, as well as construction and operation activities associated with the rebuilding of DM&E's existing mainline. The scope of the analysis will include the following activities:

1. Proposed construction of new rail mainline extension to access coal mines south of Gillette, Wyoming.
2. Proposed construction of new rail mainline to bypass DM&E's existing trackage rights on UP in Mankato, Minnesota.
3. Proposed construction of new rail line connection between DM&E and I&M Rail Link south of Owatonna, Minnesota.
4. Proposed upgrade along DM&E's existing track from the point of connection with new construction between Wasta, South Dakota and Winona, Minnesota.

Impact Categories

The EIS will address potential impacts from the proposed construction and operation of new rail facilities on the human and natural environment.

Impact areas addressed will include the categories of land use, biological resources, water resources, geology and soils, air quality, noise, energy resources, socioeconomics as they relate to physical changes in the environment, safety, transportation systems, cultural and historic resources, recreation, aesthetics, environmental justice, and cumulative effects. The EIS will include a discussion of each of these categories as they currently exist in the project area and address the potential impacts from the proposed project on each category as described below.

The EIS analysis will also address construction and operation related impacts associated with the rebuilding of DM&E's existing mainline from the point of connection with the new construction segments between Wasta, South Dakota and Winona, Minnesota. Such action, being confined within existing rail right-of-way and on existing rail property, would not normally be included in an EIS prepared by the Board. Only the potential impacts associated with rail traffic increases on DM&E's existing system resultant from the construction and operation of the proposed project would be evaluated. However, because the U.S. Army, Corps of Engineers, a cooperating agency, requires such analysis to satisfy its permitting requirements under the Clean Water Act and comments requesting such analysis be conducted were received, analysis of construction related impacts along the rail line to be rebuilt will be included in this EIS. In addition to the analysis of potential project impacts related to operational increases in rail traffic (noise, air quality, transportation, safety), the construction related impacts to land use, biological resources, water resources, geology and soils, air quality, noise, socioeconomics, safety, hazardous materials, transportation systems, cultural and historic resources, environmental justice, and cumulative effects will be analyzed as discussed below.

1. Land Use

The EIS will:

A. Describe existing land use patterns, management, and ownership (private and public) within the project area for new rail line construction and along the existing rail line to be rebuilt and identify those land uses and the amounts of each potentially impacted by new rail line construction and rail line rebuild.

B. Describe the potential impacts associated with the proposed construction and operation of new rail line and existing rail line to be rebuilt

to cropland, pastureland, rangeland, grassland, woodland, developed land, school endowment land, BLM lands,¹³ Forest Service lands, state lands, utilities, and any other land uses identified within the project area. Such potential impacts may include but not be limited to impacts to farming/ranching activities, introduction of noxious weeds, fire hazard, incompatibility with existing land uses, relocation of residences or businesses, and conversion of land to railroad uses.

C. Propose mitigative measures to minimize or eliminate potential adverse project impacts to land use, as appropriate.

2. Biological Resources

The EIS will:

A. Describe the existing biological resources within the project area for new rail line construction and along the existing rail line to be rebuilt, including vegetative communities, wildlife and fisheries, federally threatened or endangered species, and any sensitive vegetation and wildlife identified and the potential impacts to these resources resultant from construction and operation of new rail line and the existing rail line to be rebuilt.

B. Describe the wildlife sanctuaries, refuges, and national or state parks, forests, or grasslands within the project area for new construction and along the existing rail line to be rebuilt and the potential impacts to these resources resultant from construction and operation of new rail line and existing rail line to be rebuilt.

C. Propose mitigative measures to minimize or eliminate potential adverse project impacts to biological resources, as appropriate.

3. Water Resources

The EIS will:

A. Describe the existing surface and groundwater resources within the project area for new rail line construction and along the existing rail line to be rebuilt, including lakes, rivers, streams, stock ponds, wetlands, aquifers, wells, and floodplains and the potential impacts on these resources resultant from construction and operation of new rail line and the existing rail line to be rebuilt.

B. Describe the existing uses of water resources in the project area for irrigation, livestock, residential, and municipal water supply.

C. Describe the permitting requirements for the proposed new rail line construction and existing rail line

¹³ This term includes those lands for which the BLM administers the land and/or the mineral estate.

rebuild in regard to wetlands, stream crossings, water quality, and erosion control.

D. Propose mitigative measures to minimize or eliminate potential adverse project impacts to water resources and users, as appropriate.

4. Geology and Soils

The EIS will:

A. Describe the geology, soils, and mineral resources found within the project area for new rail line construction and along the existing rail line to be rebuilt, including unique or problematic geologic formations or soils, prime farmland soils, and recoverable mineral resources.

B. Describe measures employed to avoid or construct through unique or problematic geologic formations or soils.

C. Describe the impacts of new rail line and existing rail line rebuild construction activities on prime farmland soils.

D. Describe the potential impacts to mineral resources within the project area for new construction and along the existing rail line to be rebuilt.

E. Describe the potential general impacts to paleontological resources in the project area for new construction and along the existing rail line to be rebuilt due to new rail line construction and existing rail line rebuild activities, if necessary and required.

F. Propose mitigative measures to minimize or eliminate potential adverse project impacts to geology, soils, mineral resources, and paleontological resources, as appropriate.

5. Air Quality

The EIS will:

A. Discuss the existing air quality in the project area for the new construction, along the existing rail line to be rebuilt, and those portions of the UP and CP rail systems within Goodview and Winona, Minnesota.

B. Evaluate rail air emissions on new rail line, the existing rail line to be rebuilt, and those portions of the UP and CP rail systems within Goodview and Winona, Minnesota that exceed the Board's environmental thresholds in 49 CFR 1105.7(e)(5)(I), in an air quality attainment or maintenance area as designated under the Clean Air Act. The threshold anticipated to apply to this project is eight trains per day on any segment of new rail line.

C. Evaluate rail air emissions on new rail line, the existing rail line to be rebuilt, and those portions of the UP and CP rail systems within Goodview and Winona, Minnesota, if a Class I or non-attainment area as designated under the Clean Air Act is affected. The

threshold for Class I and non-attainment areas anticipated to apply to this project is 3 trains per day or more.

D. Evaluate the potential air quality impacts associated with the increased availability and utilization of Powder River Basin coal.

E. Discuss the net increase in emissions from increased railroad operations associated with the proposed operations over new rail line, the existing DM&E system and other rail systems as appropriate, including those portions of the UP and CP systems within Goodview and Winona, Minnesota.

F. Discuss the potential air emissions increases from vehicle delays at new and existing grade rail crossings where the rail crossing is projected to experience an increase in rail traffic over the threshold described above for attainment, maintenance, Class I, and non-attainment areas and that have an average daily vehicle traffic level of over 5,000. Emissions from vehicle delays at new and existing grade rail crossings and idling diesel engines and coal dust will be factored into the emissions estimates for the affected area, as appropriate.

G. Describe the potential air quality impacts of emissions from idling diesel locomotives and coal dust produced during train operation.

H. Describe the potential air quality impacts resulting during new rail line and existing rail line rebuild construction activities.

I. Propose mitigative measures to minimize or eliminate potential adverse project impacts to air quality, as appropriate.

6. Noise

The EIS will:

A. Describe existing noise receptors and conditions in the project area for new rail line construction, along the existing rail line to be rebuilt, and the portions of the UP and CP rail lines within Goodview and Winona, Minnesota.

B. Describe the potential noise impacts during new and existing rail line construction and rebuilding.

C. Describe potential noise impacts of new and rebuilt existing rail line operation for those areas that exceed the Board's environmental threshold of eight or more trains per day as a result of the proposed project along the proposed new construction, the existing rail line to be rebuilt, and along the portions of the UP and CP rail lines within Goodview and Winona, Minnesota.

D. Describe the potential impacts of the new and rebuilt existing rail line

operation due to vibration, both noise and ground-borne along the proposed new construction, the existing rail line to be rebuilt, and along the portions of the UP and CP rail lines within Goodview and Winona, Minnesota.

E. Propose mitigative measures to minimize or eliminate potential adverse project impacts to noise and vibration receptors, as appropriate.

7. Energy Resources

The EIS will:

A. Describe the transport of energy resources and recyclable commodities on the existing DM&E system.

B. Describe the potential environmental impact of the new rail line and rebuilt existing rail line on the transportation of energy resources and recyclable commodities.

C. Describe the environmental impacts of operation of the new rail line and rebuilt existing rail line on utilization of the nation's energy resources.

D. Propose mitigative measures to minimize or eliminate potential adverse project impacts to the transportation of energy resources and recyclable commodities, as appropriate.

8. Socioeconomics

The EIS will:

A. Describe the socioeconomic conditions within the area of new construction alternatives and along the existing line to be rebuilt.

B. Address socioeconomic issues shown to be related to changes in the physical environment as a result of the proposed action, including quality of life issues such as division of communities, isolation of residences, access to destinations and similar concerns.

C. Propose mitigative measures to minimize or eliminate potential adverse project impacts to socioeconomics, as appropriate.

9. Safety

The EIS will:

A. Describe rail/highway grade crossing safety factors at new grade crossings, as appropriate.

B. Describe rail/highway grade crossing safety factors at existing grade crossings along the portion of DM&E's system to be rebuilt and those portions of the UP and CP systems within Goodview and Winona, Minnesota.

C. Describe the potential for increased probability of train accidents, derailments, and train/vehicular accidents at new and existing grade crossings, as appropriate.

D. Describe the potential for disruption and delays to the movement

of emergency vehicles across the new rail line, existing rail line to be rebuilt, and those portions of the UP and CP systems within Goodview and Winona, Minnesota due to new rail line construction and operation.

E. Describe the changes at existing grade crossings implemented to increase safety at existing grade crossings due to increased rail operations on the DM&E system. Such changes would include signalization upgrades and conversion of grade crossings to grade separated crossings.

F. Propose mitigative measures to minimize or eliminate potential adverse project impacts to safety, as appropriate.

10. Hazardous Materials

The EIS will:

A. Describe any known hazardous materials sites along the preferred and alternative construction alignments and the existing rail line to be rebuilt.

B. Describe the transport of any hazardous materials over the existing DM&E system and those portions of the UP and CP rail systems within Goodview and Winona, Minnesota.

C. Describe the potential impacts to hazardous materials sites along the preferred and alternative alignments.

D. Describe the potential impacts to the transport of any hazardous materials over the existing DM&E system, new rail line proposed for construction, and those portions of the UP and CP rail systems within Goodview and Winona, Minnesota.

E. Propose mitigative measures to minimize or eliminate potential adverse project impacts to hazardous materials and the transport of any hazardous materials, as appropriate.

11. Transportation Systems

The EIS will:

A. Describe the potential effects of new rail line construction and operation on the existing transportation network in the project area including:

(1) Impact to the existing DM&E system operations

(2) Impacts to other rail carriers' operations

(3) Vehicular delays at new grade crossings for those crossings having average daily vehicle traffic of 5,000 or more and

(4) Vehicular delays at existing grade crossings that are part of the portion of the existing system proposed to be rebuilt for those crossings having average daily vehicle traffic of 5,000 or more.

(5) Vehicular delays at existing grade crossings along those portions of the UP and CP rail systems within Goodview and Winona, Minnesota for those

crossings having average daily vehicle traffic of 5,000 or more.

(6) Vehicular delays at existing and new grade crossings having average daily traffic of less than 5,000 vehicles but have unique circumstances that make such evaluation appropriate.

B. Propose mitigative measures to minimize or eliminate potential adverse project impacts to transportation systems, as appropriate.

12. Cultural and Historic Resources

The EIS will:

A. Describe the potential impacts to historic structures or districts previously recorded and determined potentially eligible, eligible, or listed on the National Register of Historic Places within or immediately adjacent to the right-of-way for the preferred and alternative construction alignments and the existing rail line to be rebuilt.

B. Describe the potential impacts to archaeological sites previously recorded and either listed as unevaluated or determined potentially eligible, eligible, or listed on the National Register of Historic Places within the right-of-way for the preferred and alternative construction alignments and the existing rail line to be rebuilt.

C. Describe the potential impacts to historic structures or districts identified by ground survey and determined potentially eligible or eligible for listing on the National Register of Historic Places within or immediately adjacent to the existing rail line to be rebuilt.

D. Describe the potential impacts to traditional cultural properties and religious use areas, sacred sites, cultural landscapes, and collection areas for religious and ceremonial plants.

E. Propose mitigative measures to minimize or eliminate potential adverse project impacts to cultural and historic resources, as appropriate.

13. Recreation

The EIS will:

A. Describe the existing recreational opportunities and activities present and undertaken in the project area for the new construction and along the existing rail line to be rebuilt.

B. Describe the potential impacts of the proposed new rail line construction and operation on the recreational opportunities and activities in the project area for the new construction and along the existing rail line to be rebuilt.

C. Propose mitigative measures to minimize or eliminate potential adverse project impacts to recreation, as appropriate.

14. Aesthetics

The EIS will:

A. Describe any areas identified or determined to be of high visual quality (components of which may include the wide open nature of the area, the perception of isolation, and feeling of vastness), wilderness areas, or waterways designated as wild and scenic within the project area for the new construction and along the existing rail line to be rebuilt.

B. Describe the potential impacts of the proposed new rail line construction and existing rail line rebuild on any areas identified or determined to be of high visual quality.

C. Describe the potential impacts of the proposed new rail line construction and existing rail line rebuild on any designated wilderness areas.

D. Describe the potential impacts of the proposed new rail line construction and existing rail line rebuild on any waterways considered for or designated as wild and scenic.

E. Propose mitigative measures to minimize or eliminate potential adverse project impacts to aesthetics, as appropriate.

15. Environmental Justice

The EIS will:

A. Describe the demographics in the project area and the immediate vicinity of the proposed new construction and along the existing rail line to be rebuilt, as appropriate, including communities potentially impacted by the construction and operation of the proposed new rail line and existing rail line to be rebuilt.

B. Evaluate whether new rail line and existing rail line construction, rebuild, or operation activities would have a disproportionately high adverse impact on any minority or low-income groups.

C. Propose mitigative measures to minimize or eliminate potential adverse project impacts to minority or low-income groups, as appropriate.

16. Cumulative Effects

The EIS will discuss cumulative effects of the construction and operation of the new rail line and DM&E's existing system.

By the Board, Elaine K. Kaiser, Chief,
Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 99-5930 Filed 3-9-99; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Customhouse Brokers Licence and Permit

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Customhouse Brokers Licence and Permit. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 10, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927-1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting

**SEA's Environmental Hotline
Dakota, Minnesota and Eastern Railway
Retrieval Form
1-877-404-3044**

Date: _____

Time: _____

Initials: _____

CALLER INFORMATION:

Name: _____ Telephone No. (____) _____

Title: _____

Agency: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

REASON FOR CALL:

- | | |
|---|--|
| <input type="checkbox"/> Requested Final Scope | <input type="checkbox"/> Requested Entire Final EIS |
| <input type="checkbox"/> Requested a call back | <input type="checkbox"/> Requested Executive Summary |
| <input type="checkbox"/> Inquired about schedule deadlines | <input type="checkbox"/> Requested Entire DEIS |
| <input type="checkbox"/> Requested specific info. for _____ | |
| <input type="checkbox"/> Requested Final Draft Scope _____ | |

FOLLOW-UP ACTION TAKEN:

- | | |
|---|---|
| <input type="checkbox"/> Returned call | <input type="checkbox"/> Sent information requested |
| <input type="checkbox"/> Other action taken | |

NOTES: _____

Dear Interested Party:

Thank you for your inquiry to the Board's environmental hotline regarding map availability for the proposed Powder River Basin Expansion Project, Finance Docket No. 33407. Attached is the map index, order form, and postage fee schedule for the available maps.

Please note that these maps are being provided with the understanding that they are **accurate as of the date stamped, preliminary in nature, and subject to change**. Revised and/or updated maps will not be made available prior to release of the Draft EIS. This information is not being provided as a formal part of the EIS review process, but as a courtesy to assist you in understanding the proposed project.

The following documents are available (see attachments for details):

1. Scale Accurate Digital Image (SADI) maps of Alternative C - Wall, SD to west staging yard.
2. SADI maps of existing alignment from Wasta, SD to Winona, MN.
3. SADI map of the Wall, SD realignment.
4. Map showing all existing and proposed new alignments.
5. Maps of the Mankato and Owatonna alternative alignments as proposed by DM&E.
6. Milepost map and location charts*

All maps are available for a fee of \$1.50 plus postage. Please see enclosures for more detail.

We hope that you find this information helpful. If you have additional questions, please call the Board's Environmental Hotline at 1-877-404-3044.

* Because the location of proposed staging/marshaling yards and sidings will vary depending on the build alternative imposed, you must order the milepost maps and location charts if you wish to identify the exact location of these proposed facilities.

SURFACE TRANSPORTATION BOARD POWDER RIVER BASIN EXPANSION PROJECT

Maps and Postage Rates

Description of Available Maps*

New Construction

1. SADI**: Alternative C from Wall, SD to west staging yard
2. One map showing all existing and proposed new alignments

Rebuild

1. SADI**: Existing alignment from Wasta, SD to Winona, MN
2. Mankato and Owatonna, MN alternatives alignments
3. Wall, SD realignment

POSTAGE AND SHIPPING RATES

BULK MAP POSTAGE RATE

Map ID/Section	MN/SD Postage	WY Postage
1-50 maps	\$4.50	\$4.50
51-100 maps	\$4.75	\$4.90
101-150 maps	\$5.50	\$5.75
151-200 maps	\$5.75	\$6.00
201-300 maps	\$6.00	\$6.25
Mankato Loop	\$1.50	\$1.50
Owatonna Loop	\$1.50	\$1.50

ENTIRE MAP SECTION POSTAGE RATE

Map ID/Section	MN/SD Postage	WY Postage
Section 1 (263 maps)	\$6.00	\$6.25
Section 2 (218 maps)	\$6.00	\$6.25
Section 3 (296 maps)	\$6.00	\$6.25
Section 4 (310 maps)	\$6.00	\$6.25
Section 5 (132 maps)	\$5.50	\$5.75
Section 6 (99 maps)	\$4.75	\$4.90
Section 7 (69 maps)	\$4.75	\$4.90
Section 8 (172 maps)	\$5.75	\$6.00
Wall, SD Realignment (32 maps)	\$4.50	\$4.50
Alternative C (SADI)	\$4.75	\$4.90
Rebuild (SADI)	\$4.75	\$4.90

* Individual maps or entire sections may be ordered

** Scale Accurate Digital Image (SADI)

Comment and Document Summaries



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Section of Environmental Analysis

November 30, 1998

Mr. Stephen G. Thornhill
Burns & McDonnell
P.O. Box 419173
Kansas City, MO 64063

Re: Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation --
Upgrade and Expansion -- Comment Summary Package

Dear Mr. Thornhill:

Enclosed please find the following items concerning the proposed construction and operation of the Dakota, Minnesota and Eastern Railroad (DM&E):

- A chart summarizing by issue all comments received to date.
- A table identifying all comments that have been entered into the Public Record.
- A copy of all comments received to date separated by state.

To date 5,146 issues have been identified by the Surface Transportation Board (Board) on the Scope and the Notice of Amended Scope. As of November 18, 1998, 1097 comments have been entered into the public record. The Board does not consider comments received in the form of comment response forms and/or comment response cards as part of the public record. However the issues are still being tracked and considered as part of the environmental analysis.

All comments received were read to identify issue(s) and to determine if a response was required from the Board. Many commentors raised issues that were not part of the Draft Scope of Study. Therefore, the enclosed Comment Key Sheet was developed to capture and reference all issues identified. The enclosed table provides a complete accounting of issues. Following is a guide to interpreting the data found in this table.

The first column either identifies the Impact Category as listed in the Draft Scope of Study or issues raised by commentors that fall outside the impact categories identified in the

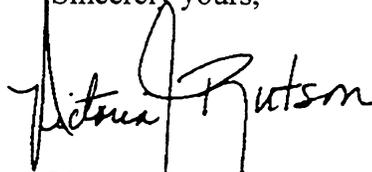
Draft Scope of Study. (See issues listed on the enclosed Comment Key Sheet.) The first row next to each Impact Category/Issue identifies either the sub-issue of the Impact Category (A, B, C, etc.), or an Issue (1 through 139) raised by a commentor. The second row lists the total number of commentors identifying that particular Impact Category sub-issue or Issue. For example, in the Impact Category/Issue - Geology and Soils shown below, 39 commentors identified Issue 5 (erosion), from the Comment Key Sheet, while four commentors identified sub-issue A ("Describe the geology and soils found within the project area, including unique or problematic geologic formations or soils and prime farmland soils."), under Geology and Soils in the Draft Scope of Study.

Impact Category/Other Issue										
Geology and Soils	5		A		B		D		12	
		39		4		1		1		16

A cursory review indicates that only 39% of the issues raised were identified earlier as key issues in the Draft Scope of Study. By far, the largest number of issues, 13%, identified various types of mitigation.

If you have any questions or comments, please feel free to contact me at (202) 565-1545.

Sincerely yours,



Victoria Rutson
Project Manager

Enclosures

Powder River Basin Expansion Project

Scoping Comments

Comment Key Sheet

- 1-rancher
- 2-decrease in property values
- 3-fires
- 4-noxious weeds - (esp. from ties and equipment used for construction)
- 5-erosion
- 6-follow existing corridors
- 7-no build
- 8-Native American issues
- 9-conservation easements
- 10-not in my backyard
- 11-disruption of livestock and livelihood
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- 15-water pipe line would have to be replaced
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- 23-difficult for the elderly to comprehend
- 24-not granting Niobrara County cooperating agency status
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- 32-EIS conducted by people not familiar with the study area
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- 64-pedestrian safety (children, bicyclists, patients, etc)
- 65-cargo westward bound?

Powder River Basin Expansion Project

Scoping Comments

Comment Key Sheet

- 66-flash flooding
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- 70-contract between R.R. and local fire boards to pay for cost of monitoring and fighting fires along the tracks
- 71-require expedited proceedings to reimburse landowners due to fire loss
- 72-access roads along the ROW
- 73-prefer northern bypass of Mankato
- 74-diesel fumes from train
- 75-construction phase would require water for dust compaction-only source of water is Cheyenne River which would affect ranchers and wildlife
- 76-traffic congestion and delays
- 77-scheduling of trains at least disruptive times
- 78-look at impacts of discarded RR ties on upgrade
- 79-concern about the widespread spraying of defoliant along track
- 80-more barge traffic on Mississippi
- 81-barrier fencing along track to prevent pedestrian traffic
- 82-traffic control for emergency vehicle to get to overpasses or underpasses
- 83-impacts to oil and gas wells and lines
- 84-move switching yards out of Waseca
- 85-mitigate loss of tree and forest cover
- 86-irrigation
- 87-build railroad through open and unpopulated areas as much as possible
- 88-seed construction areas to prevent erosion and dust and replace what was removed
- 89-fire breaks
- 90-use existing corridor through Mankato
- 91-will draw hobos and criminals along track
- 94-signals at 50% or more of city crossings
- 96-trash
- 97-disrupt wildlife
- 99-Set up independent board to handle tough issues
- 100-rail line should run east of Pierre with only spur for grain suppliers
- 101-task force member
- 102-children play and swim off railroad bridge in Ft. Pierre, higher train speed and volumes will not provide adequate warning
- 110-full EIS on existing RR
- 111-buy all properties along track
- 112-make shallow slopes for 'cut' and 'fill' and reintroduce indigenous vegetation
- 114-reduce train speed through cities
- 115-cover coal cars
- 116-bridge platforms where individuals can move off tracks when train comes by
- 117-school endowment lands
- 118-install noise barriers
- 119-will cut off access to home
- 120-questions safety of bridge at Pierre
- 121-wants lights and gates at every crossing including rural areas
- 122-make horn blasts directional
- 123-place reflective stripes on every car
- 124-depress track
- 125-utilities next to or under tracks
- 126-reduce # of trains
- 127-include CP line in EIS
- 128-business owner
- 129-EIS include contingency plan for spills
- 130-limited idling time for engines because of diesel fumes
- 131-diminished aesthetics within cities
- 132-increases in safety because of upgrade
- 133-exposure of regulated materials (ie: underground storage tanks)
- 134-look at ALL alternatives not just ones listed in DM&E's application
- 135-prefer southern bypass of Mankato
- 136 - look at impacts to those connecting w/ DM&E's system
- 137 - coal dust build-up in relation to water run-off
- 138 - air quality impacts from trains idling in yards and on sidings
- 139 - coal dust build-up in relation to increasing and/or accelerating fire



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Section of Environmental Analysis

April 7, 1999

Mr. Stephen G. Thornhill
Burns & McDonnell
P.O. Box 419173
Kansas City, MO 64063

Re: Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation --
Upgrade and Expansion -- Comment Summary Package #2

Dear Mr. Thornhill:

Enclosed please find the following items concerning the proposed construction and operation of the Dakota, Minnesota and Eastern Railroad (DM&E):

- Bar graphs (16) summarizing all identified concerns by issue area.
- A copy of all comments received between November 19, 1998 and March 10, 1999 separated by state.
- Issue Area Table and Key.

Please note that the comments summarized here reflect submissions received prior to the issuance of the Final Scope of Study on the Environmental Impact Statement and Request for Comments on 1) the Modified Proposed Action, referred to as Alternative C, and 2) the City of Rochester, Minnesota's South Bypass Proposal.

As of March 10, 1999, a total of 1,352 commentors have identified 6,230 issues on the Scope and the Notice of Amended Scope. It is important to note that many commentors have submitted more than one comment and have identified the same issue several times. Comments received in the form of comment response forms, comment response cards, and petitions are not entered into the formal docket but are treated as part of the environmental record. Issues raised through such mass mailings are being tracked and considered through the environmental review process.

All comments received were read to identify issues and to determine if a response was required. Because commentors identified several concerns that were outside of the Draft Scope of Study, the enclosed bar graphs were developed to more accurately capture all concerns identified. For the issue areas Mitigation and Miscellaneous, concerns identified by fewer than 20 citizens are not captured. For a complete accounting of all concerns identified by issue area, please see the attached table and key.

If you have any questions or comments, please feel free to contact me at (202) 565-1545.

Sincerely yours,

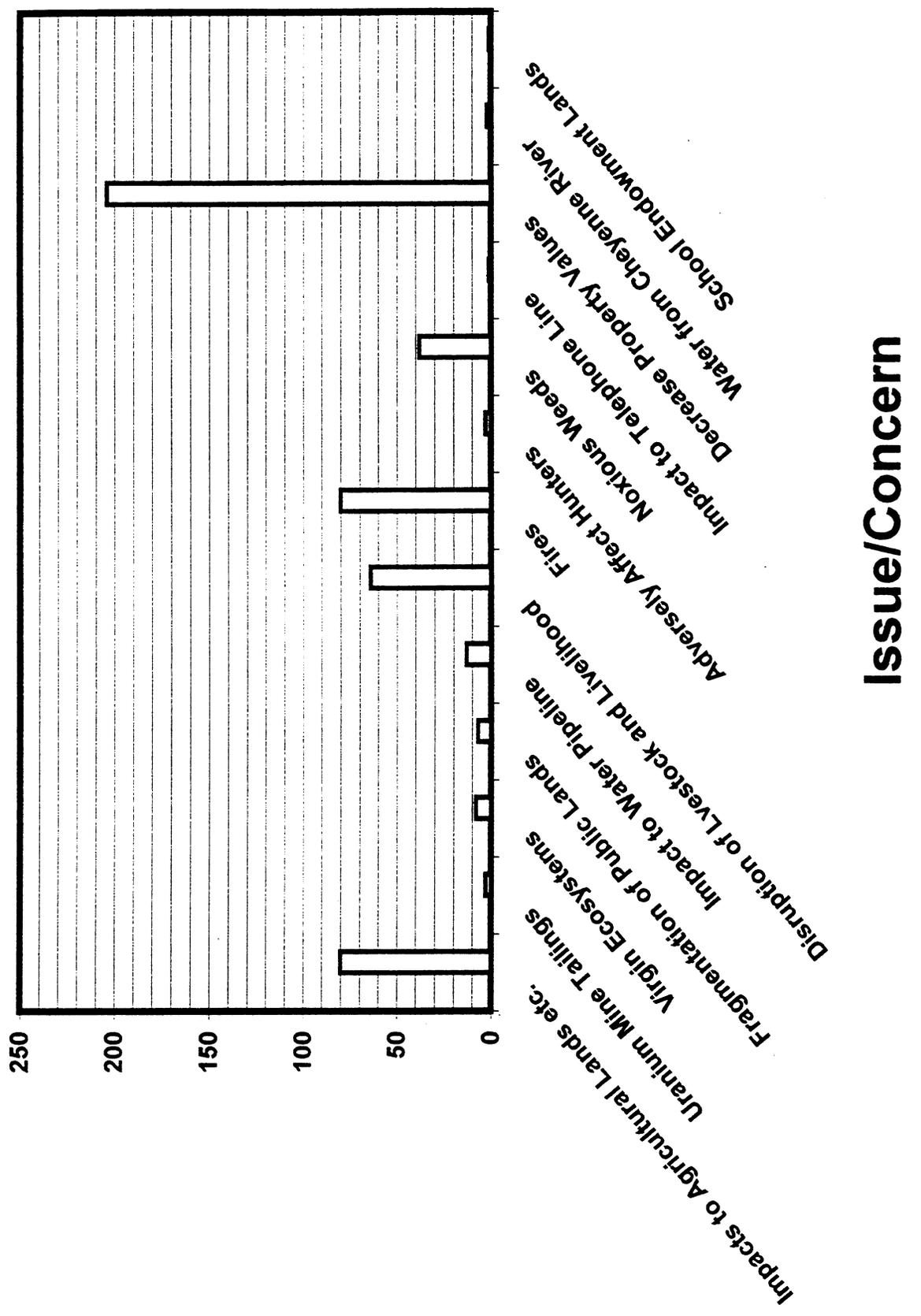
A handwritten signature in black ink, appearing to read "Victoria Rutson". The signature is fluid and cursive, with the first name "Victoria" and last name "Rutson" clearly distinguishable.

Victoria Rutson
Project Manager

Enclosures

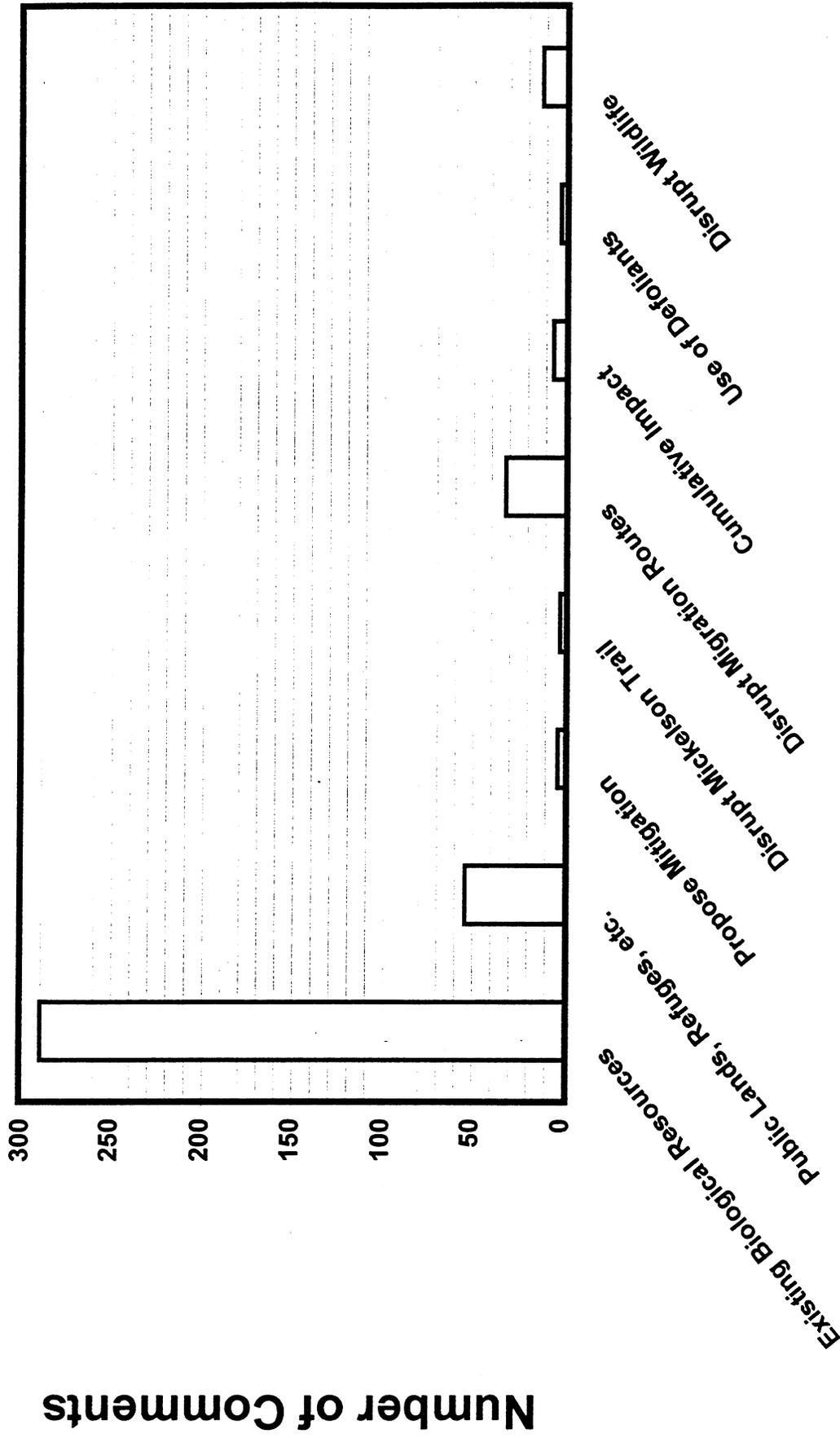
DME - Land Use

Number of Comments



Issue/Concern

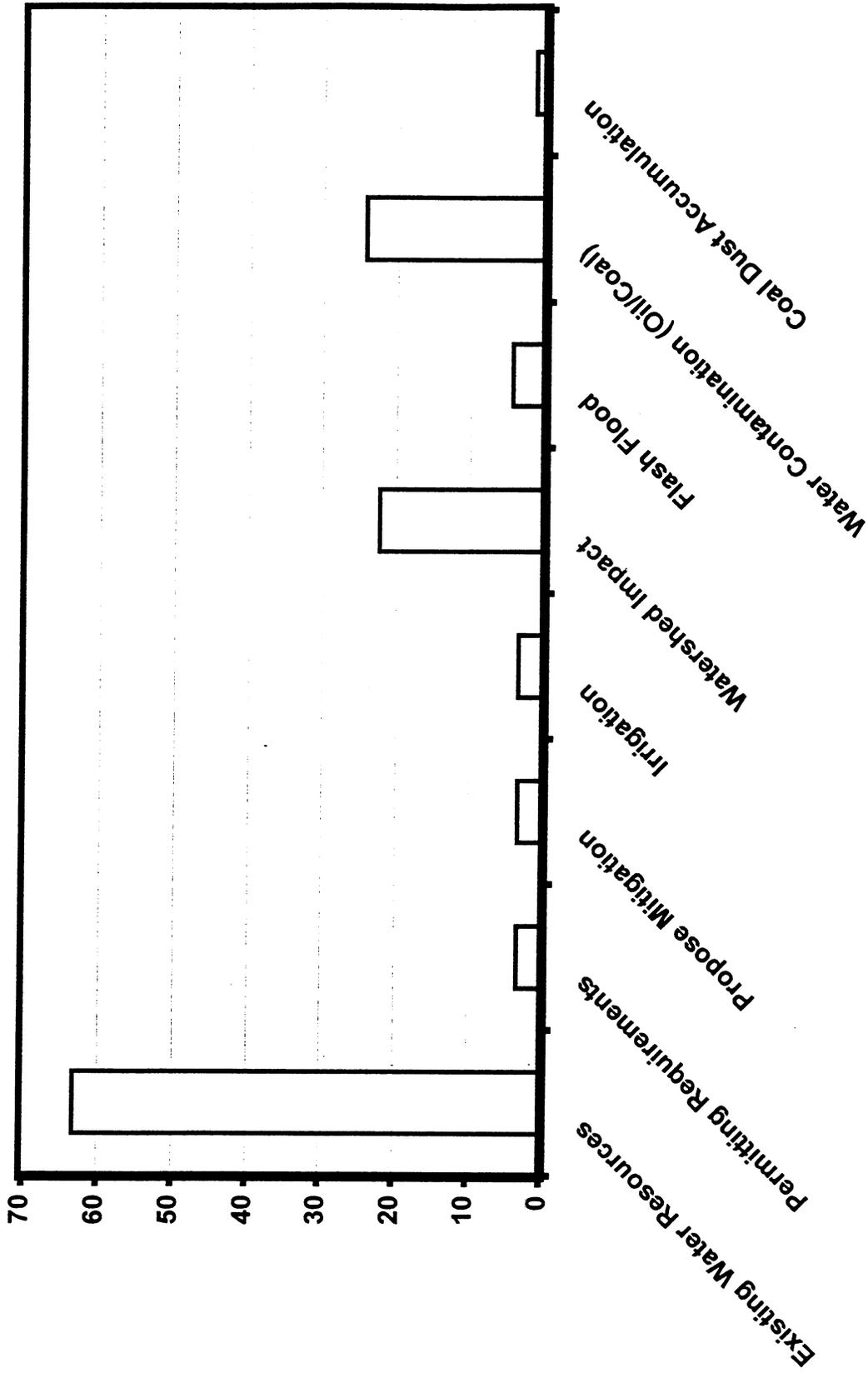
DME - Biological Resources



Issue/Concern

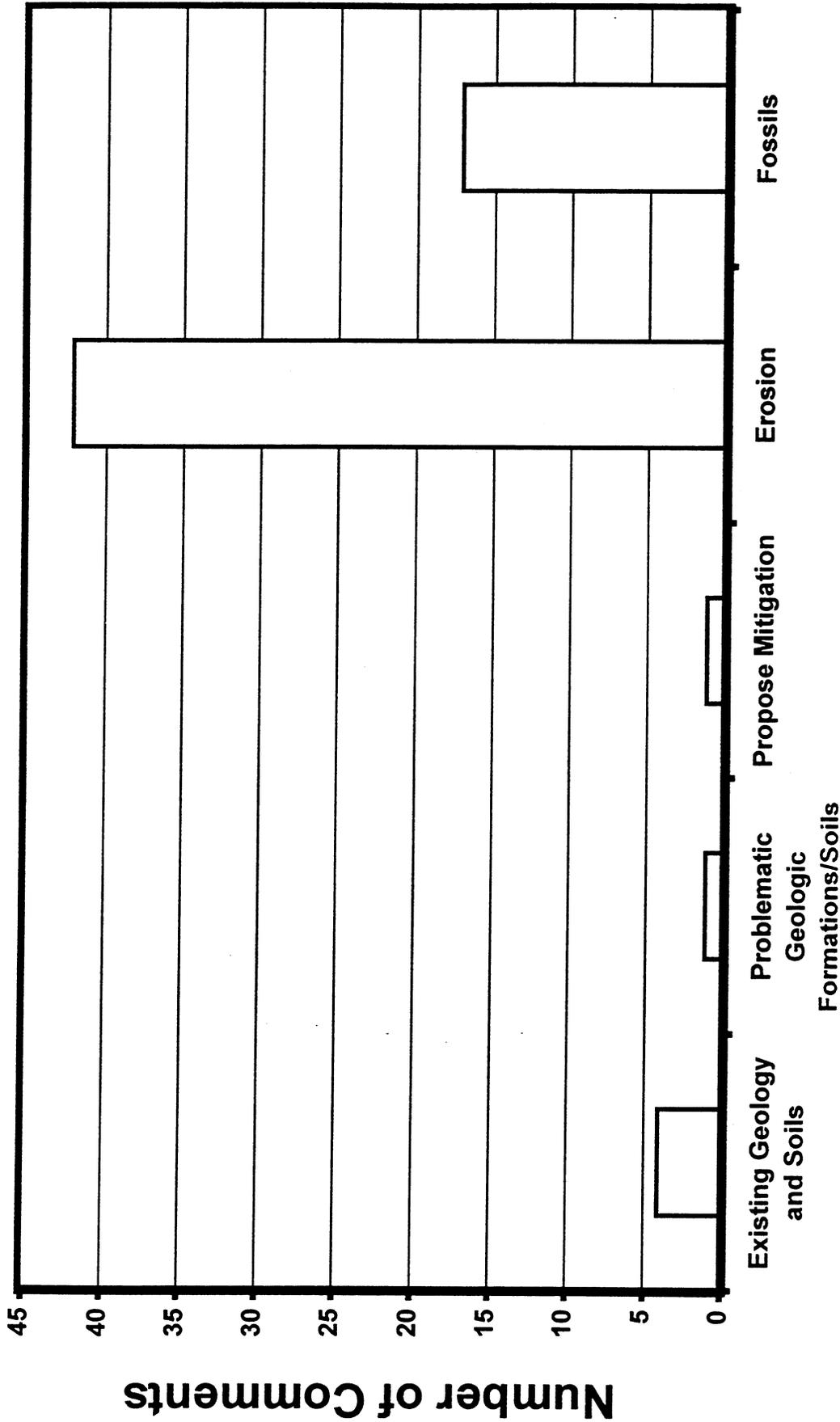
DME - Water Resources

Number of Comments



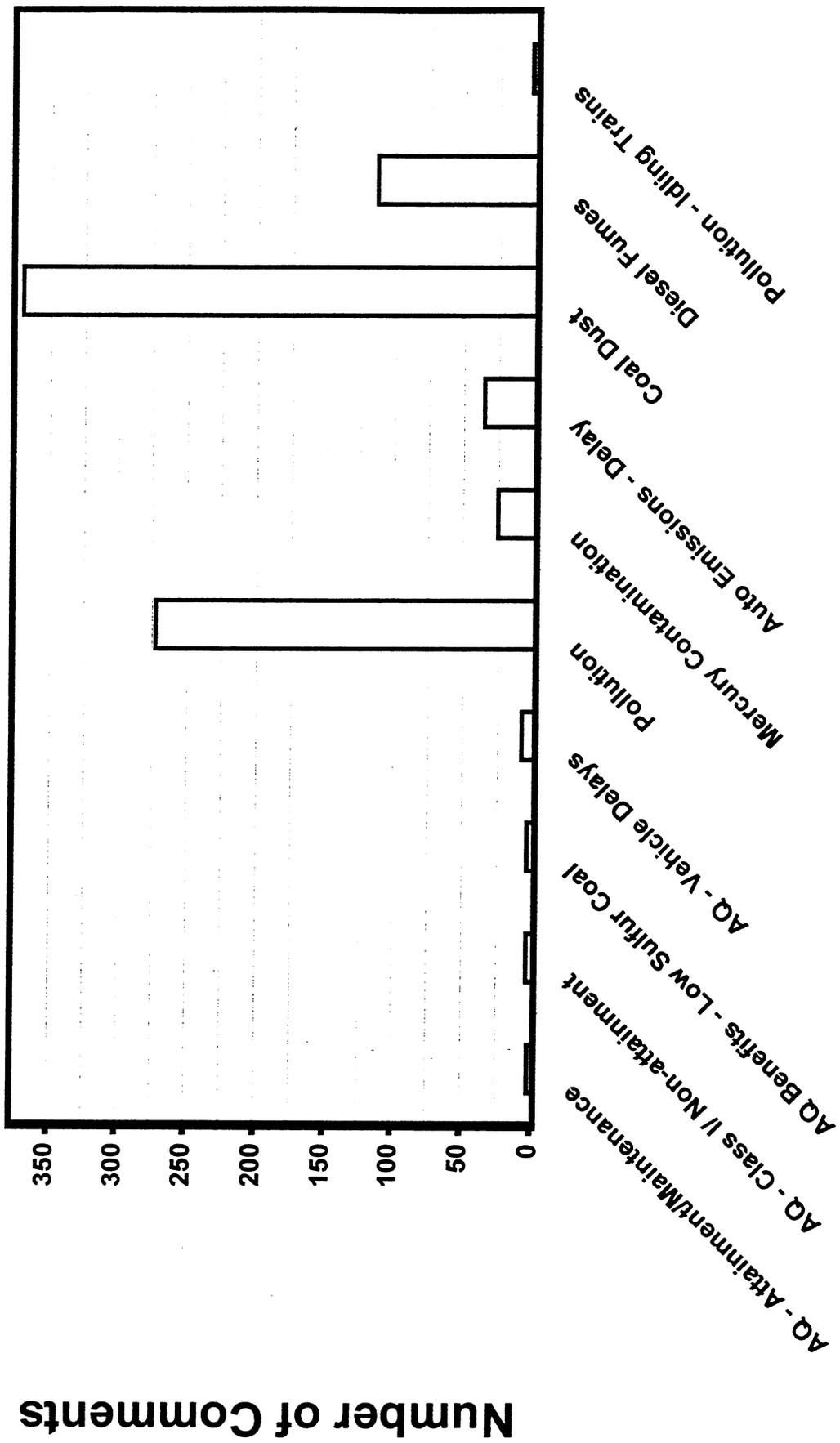
Issue/Concern

DME - Geology and Soils



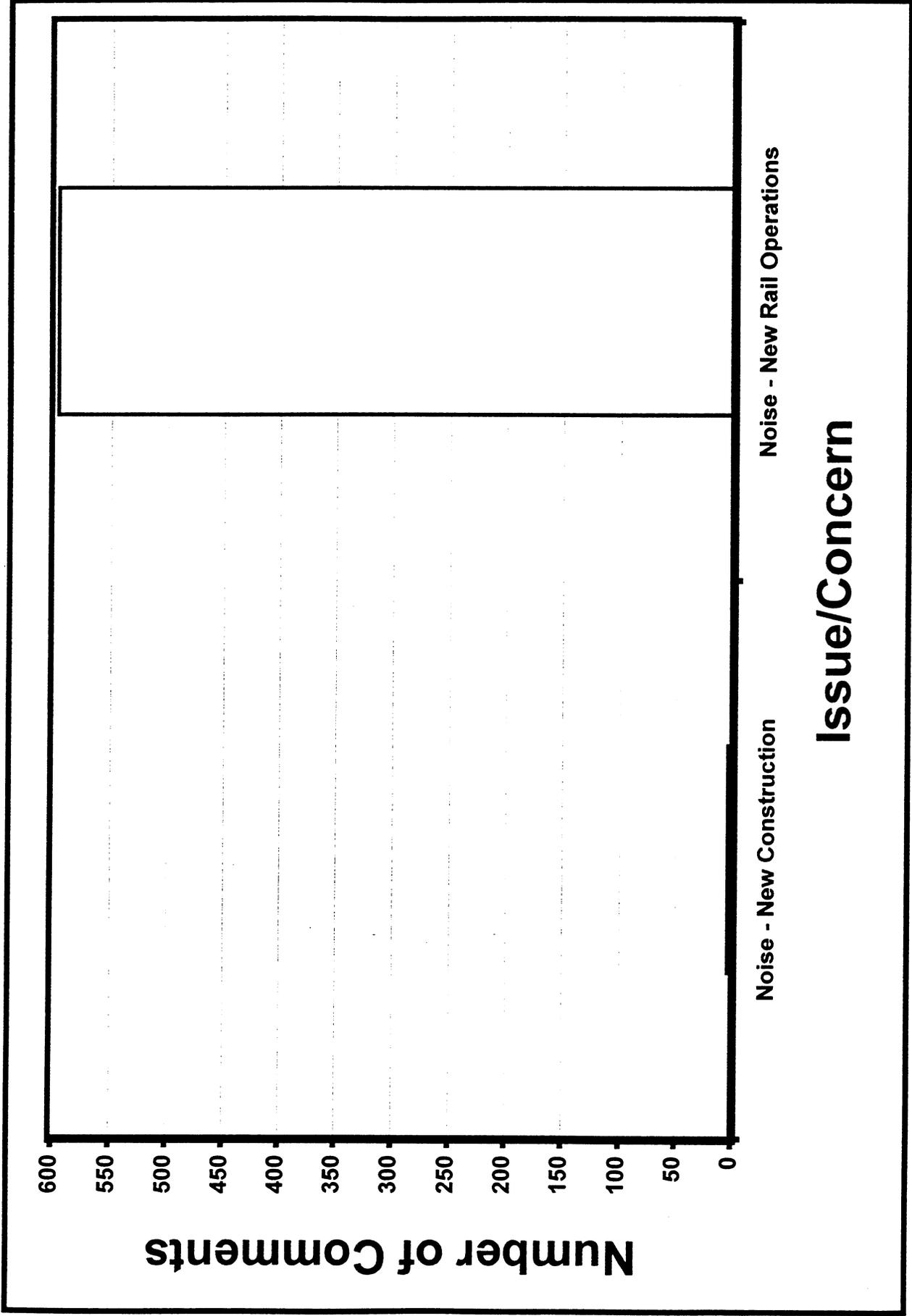
Issue/Concern

DME - Air Quality

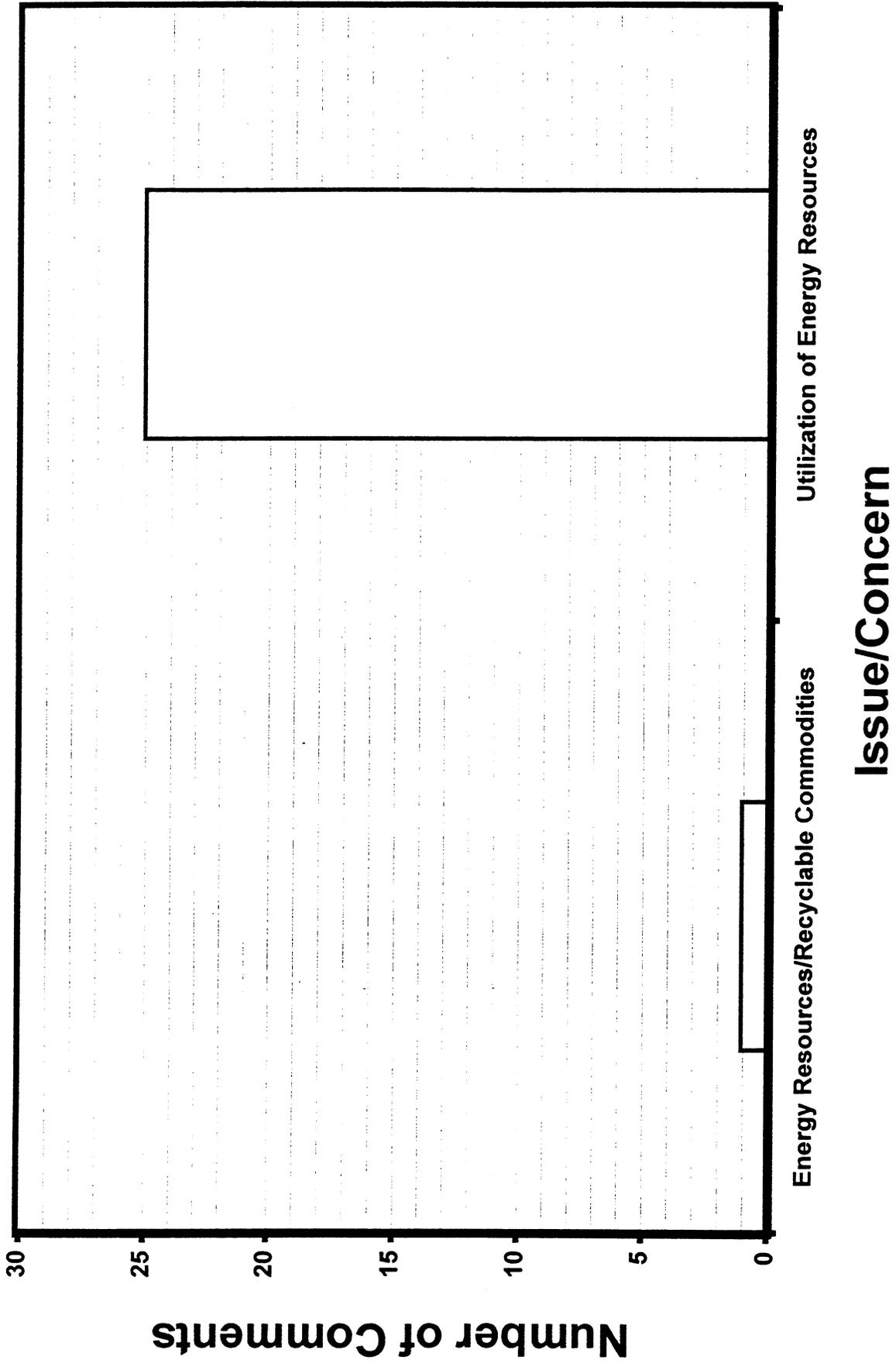


Issue/Concern

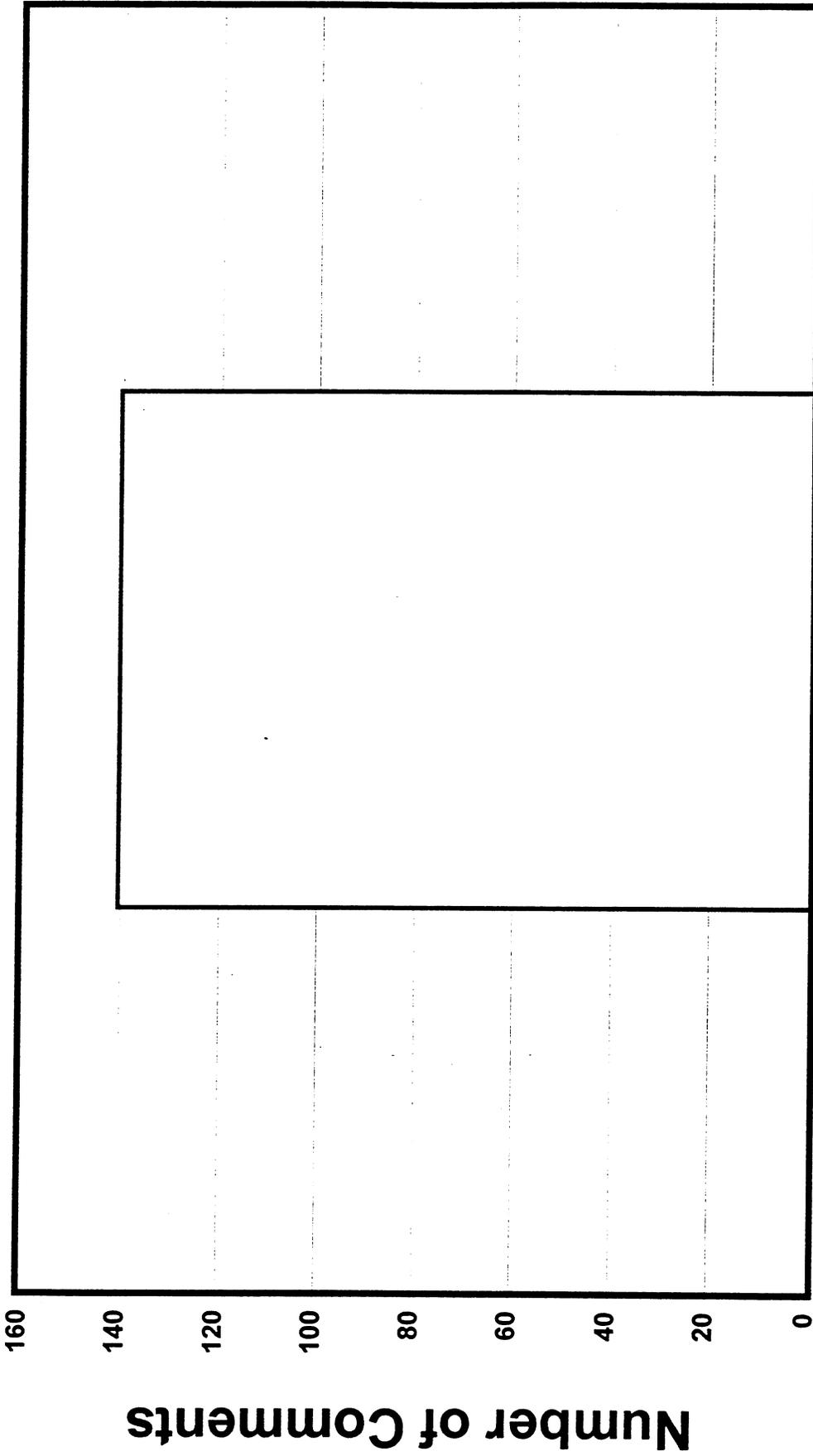
DME - Noise



DME - Energy Resources



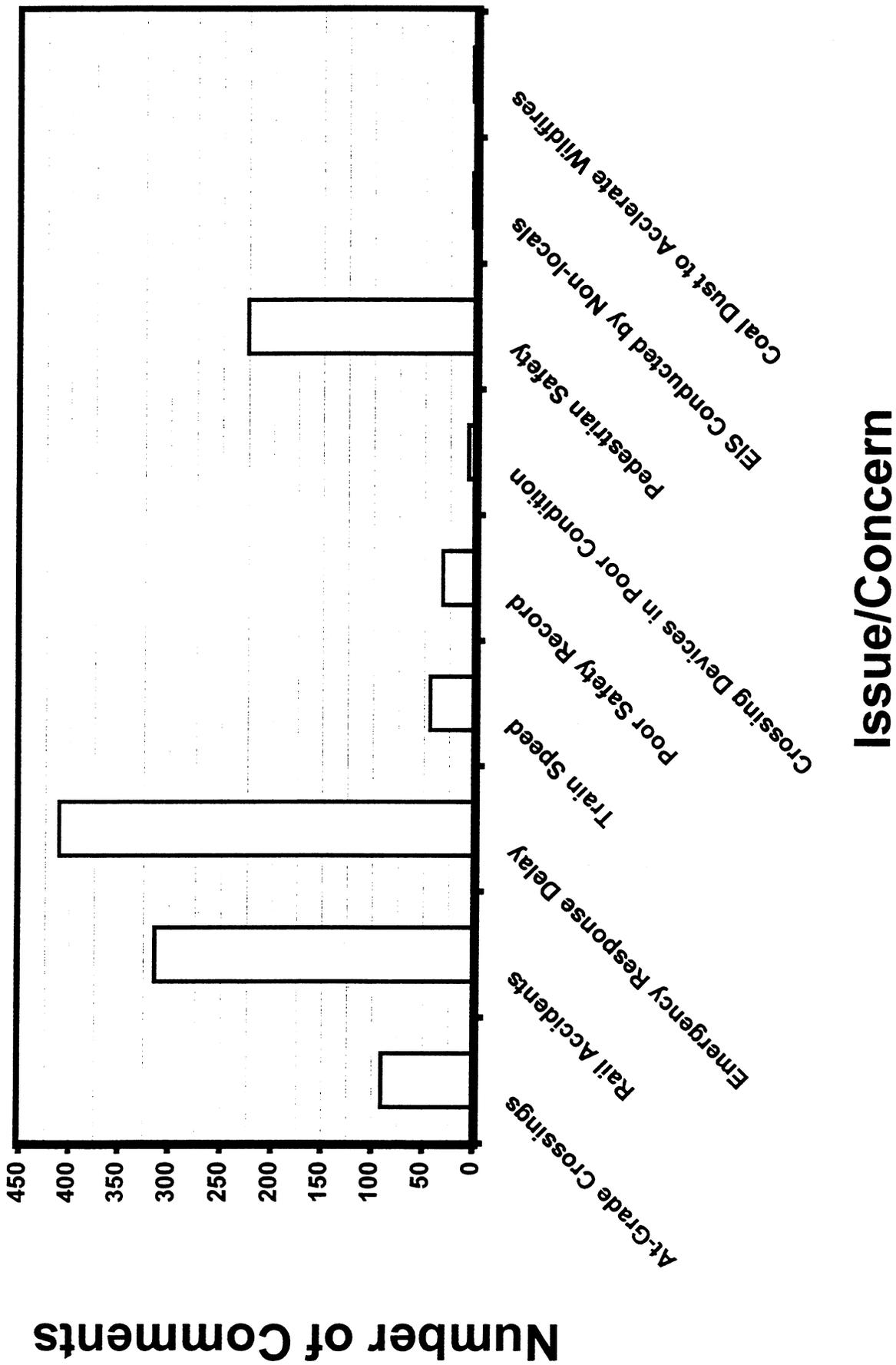
DME - Socioeconomics



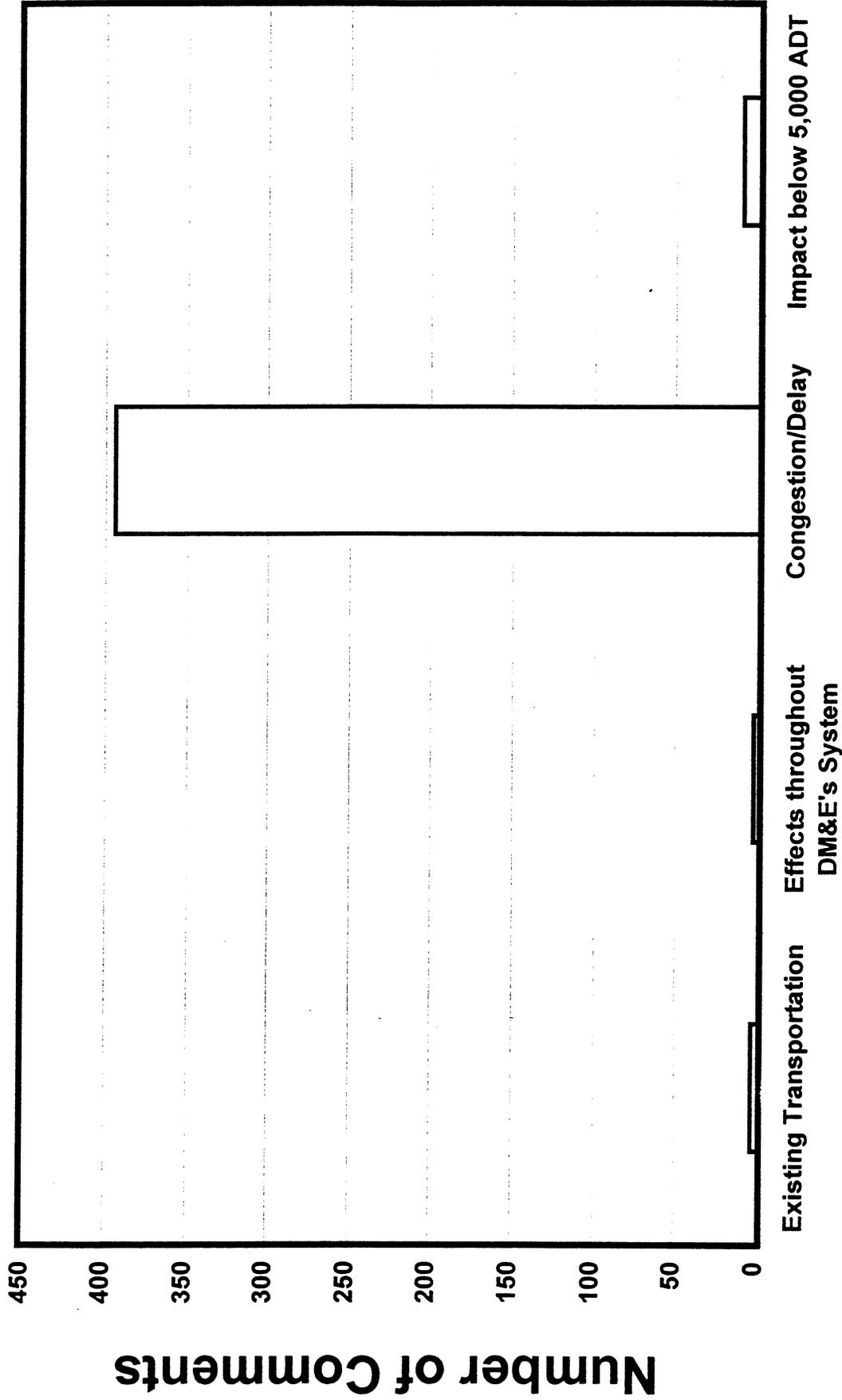
Community Impact

Issue/Concern

DME - Safety

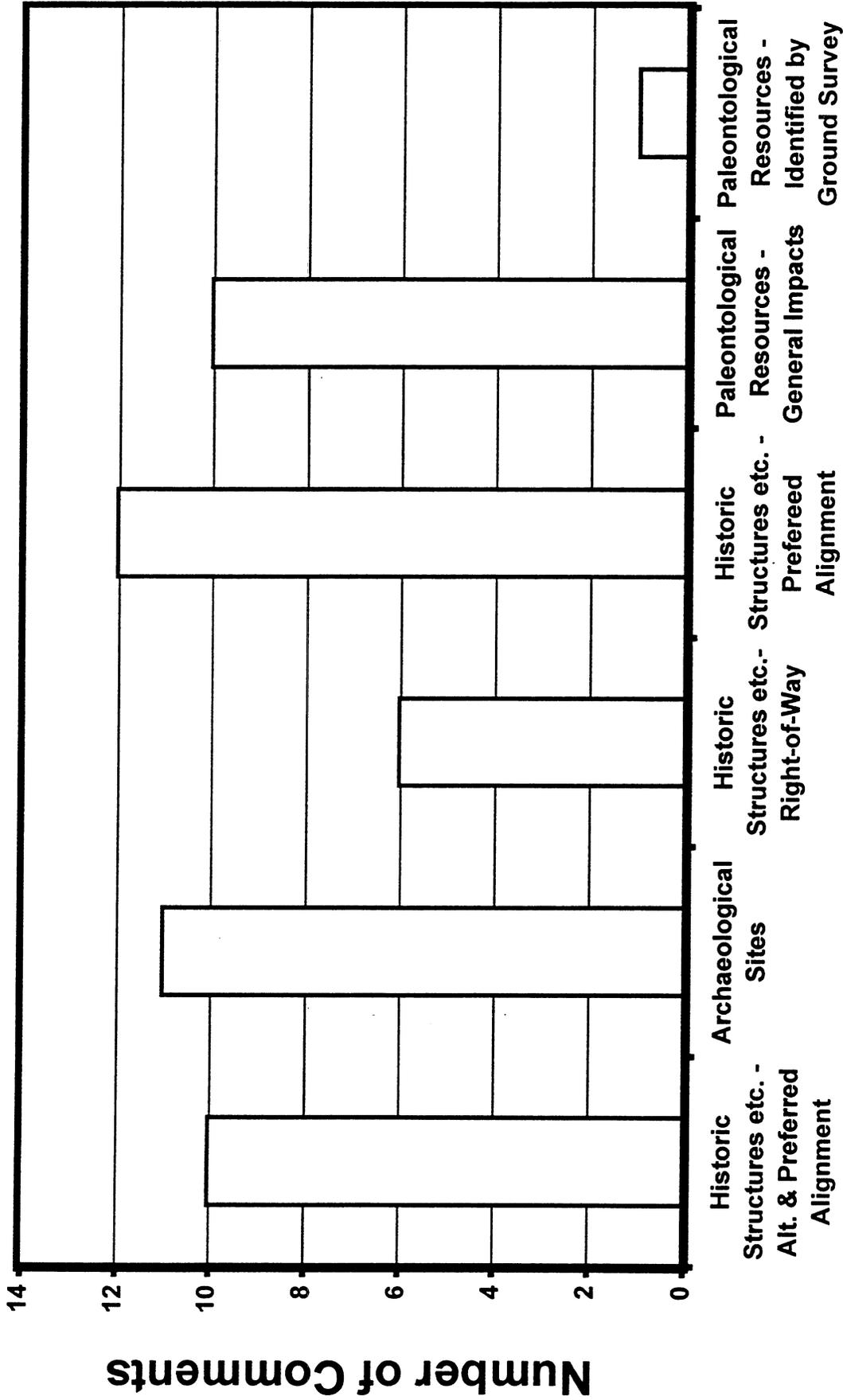


DME - Transportation



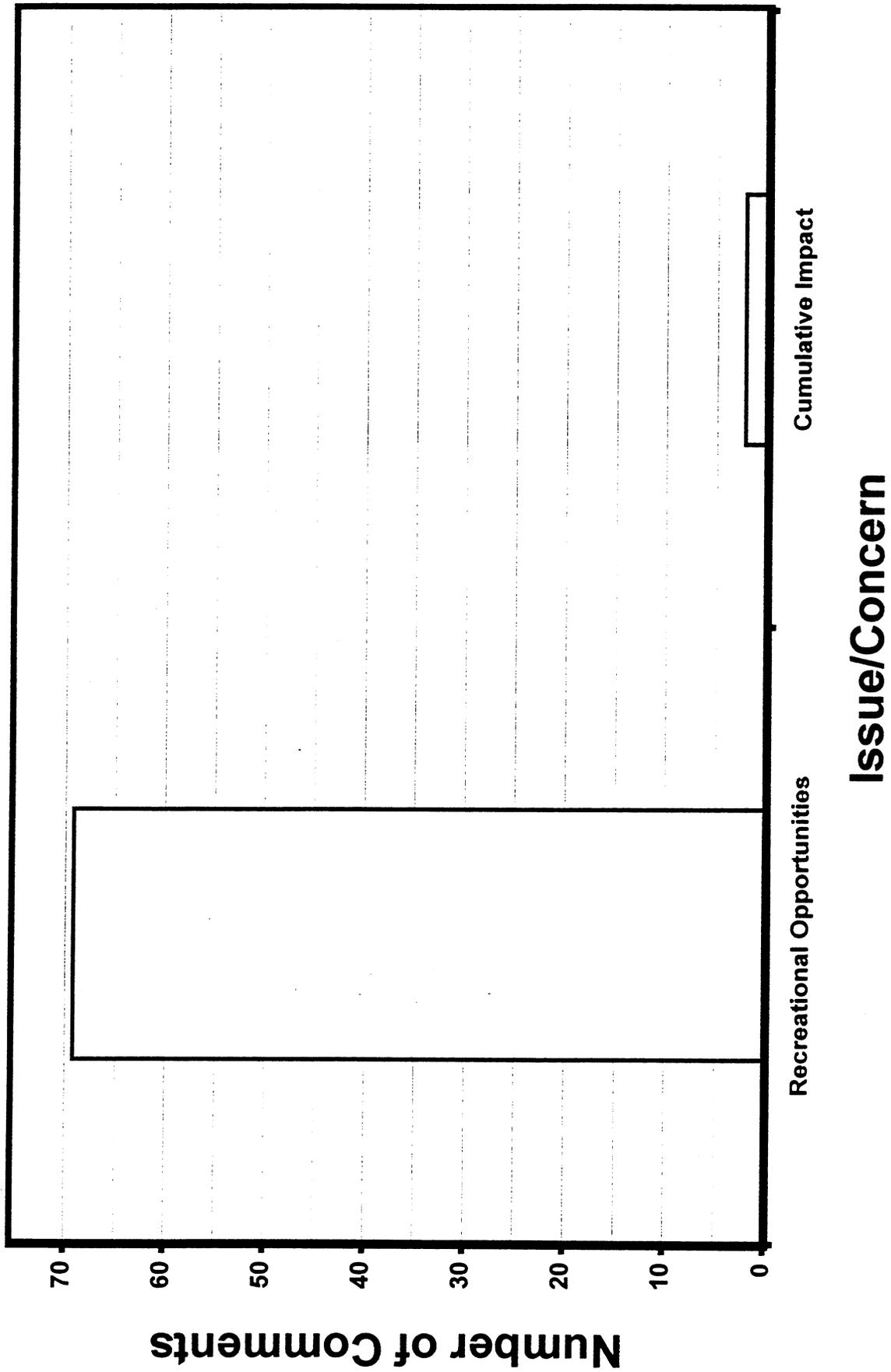
Issue/Concern

DME - Cultural and Historic Resources

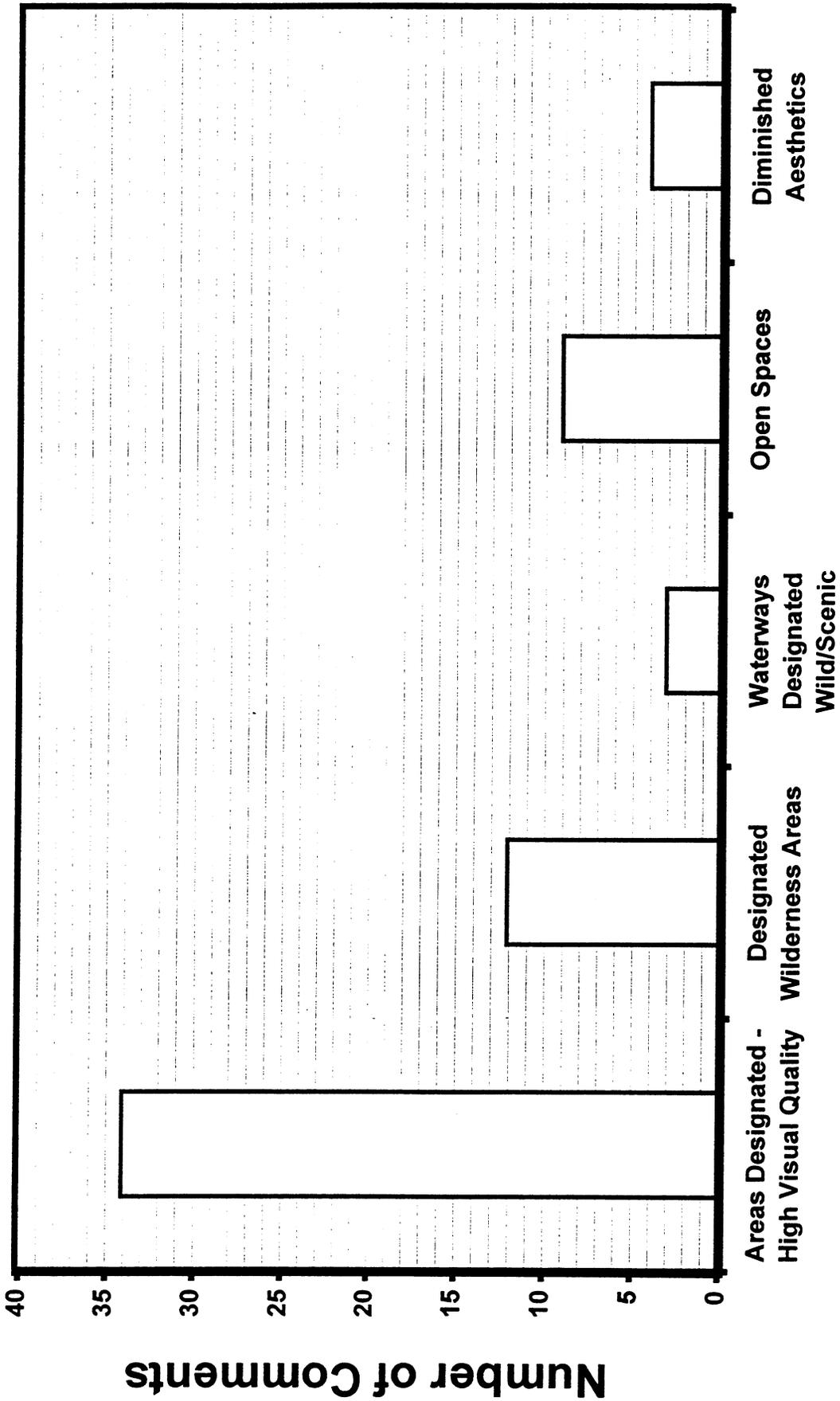


Issue/Concern

DME - Recreation

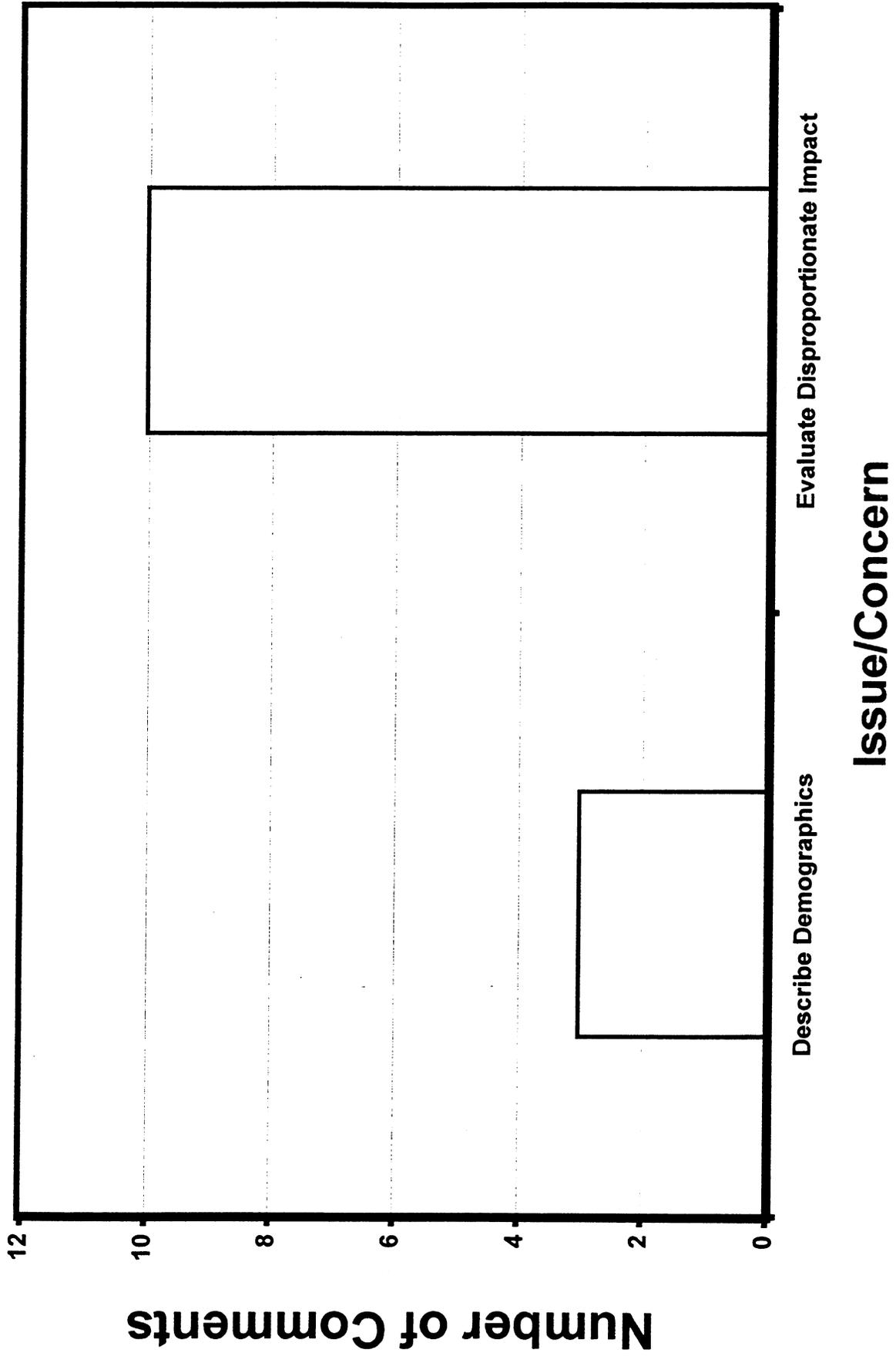


DME - Aesthetics

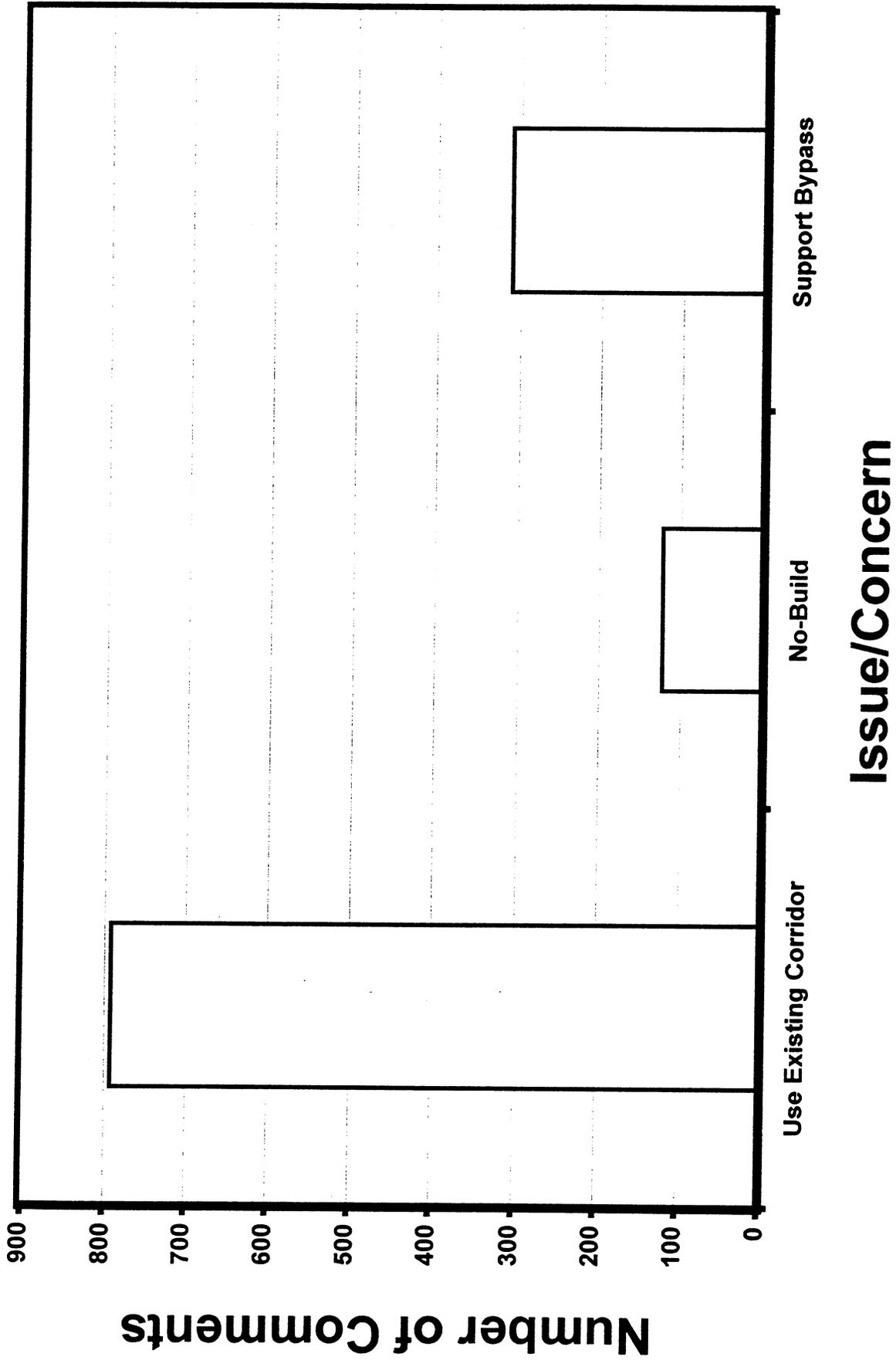


Issue/Concern

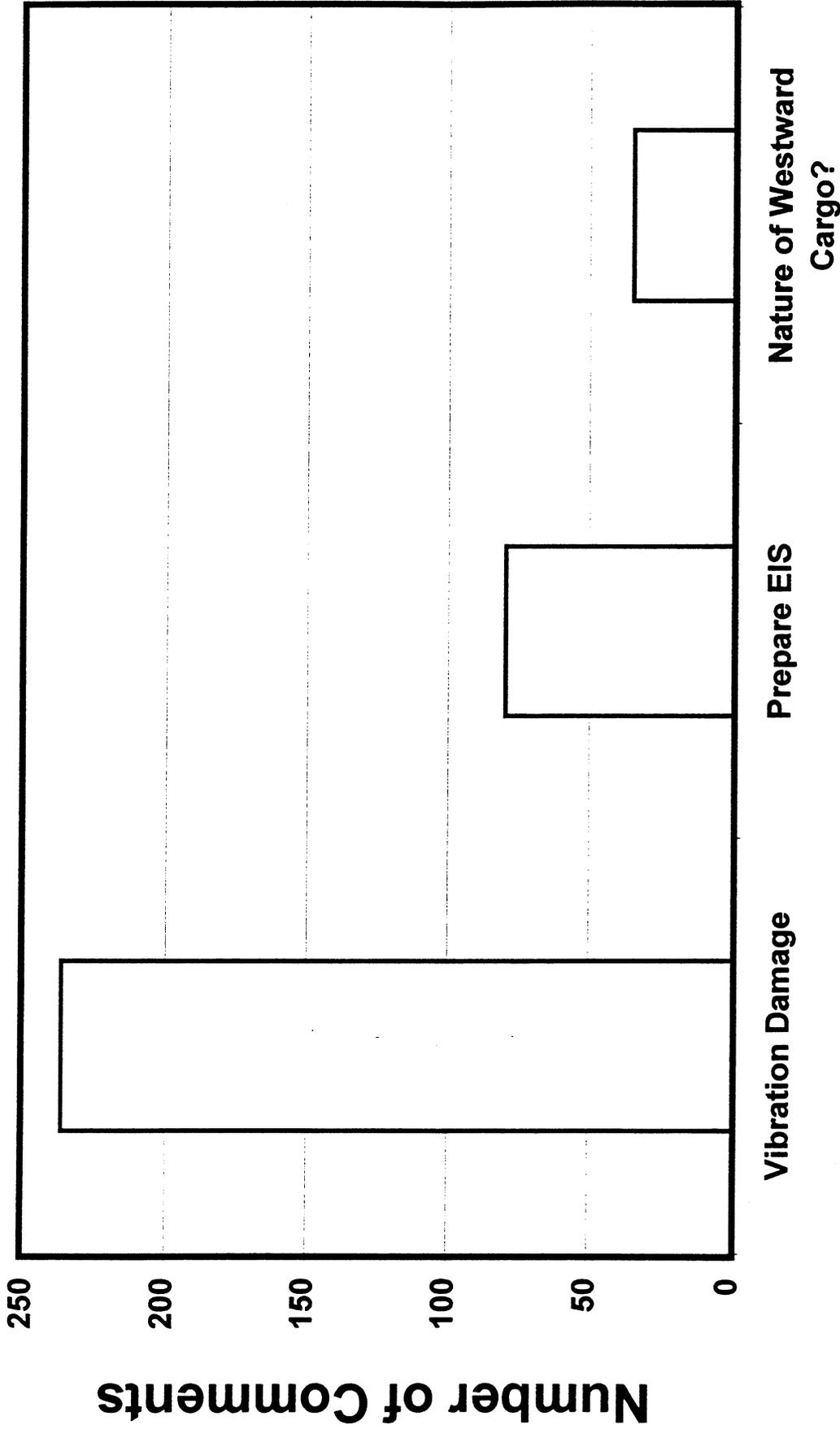
DME - Environmental Justice



DME - Proposed Mitigation



DME - Miscellaneous Topics



Land Use	18	B	36	37	15	11	64	3	14	4	16	2	75	117	80	16	414	84		
Biological Resources																	504	80	16	
Water Resources																	393	344	88	49
Geology and Soils																	123	69	56	54
Air Quality																	65	6	9	56
Noise																	822	11	1	811
Energy Resources																	597	597	100	0
Socioeconomics																	26	26	100	0
Safety																	140	140	100	0
Transportation Systems																	1113	810	73	303
Cultural and Historic Resources																	404	3	1	403
Recreation																	50	50	100	0
Aesthetics																	71	69	99	2
Environmental Justice																	62	49	79	13
Mitigation																	13	13	100	0
Mitigation (continued)																				
Mitigation (continued)																				
Mitigation (continued)																				
Miscellaneous																	1405			1405
Miscellaneous (continued)																				
Grand Total																	6230	2267	36%	3952

Powder River Basin Expansion Project

Scoping Comments

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Powder River Basin Expansion Project

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- 86-irrigation
- 87-build railroad through open and unpopulated areas as much as possible
- 88-seed construction areas to prevent erosion and dust and replace what was removed
- 89-fire breaks
- 90-use existing corridor through Mankato
- 91-will draw hobos and criminals along track
- 94-signals at 50% or more of city crossings
- 96-trash
- 97-disrupt wildlife
- 99-Set up independent board to handle tough issues
- 100-rail line should run east of Pierre with only spur for grain suppliers
- 101-task force member
- 102-children play and swim off railroad bridge in Ft. Pierre, higher train speed and volumes will not provide adequate warning
- 110-full EIS on existing RR
- 111-buy all properties along track
- 112-make shallow slopes for 'cut' and 'fill' and reintroduce indigenous vegetation
- 114-reduce train speed through cities
- 115-cover coal cars
- 116-bridge platforms where individuals can move off tracks when train comes by
- 117-school endowment lands
- 118-install noise barriers
- 119-will cut off access to home
- 120-questions safety of bridge at Pierre
- 121-wants lights and gates at every crossing including rural areas
- 122-make horn blasts directional
- 123-place reflective stripes on every car
- 124-depress track
- 125-utilities next to or under tracks
- 126-reduce # of trains
- 127-include CP line in EIS
- 128-business owner
- 129-EIS include contingency plan for spills
- 130-limited idling time for engines because of diesel fumes
- 131-diminished aesthetics within cities
- 132-increases in safety because of upgrade
- 133-exposure of regulated materials (ie: underground storage tanks)
- 134-look at ALL alternatives not just ones listed in DM&E's application
- 135-prefer southern bypass of Mankato
- 136 - look at impacts to those connecting w/ DM&E's system
- 137 - coal dust build-up in relation to water run-off
- 138 - air quality impacts from trains idling in yards and on sidings
- 139 - coal dust build-up in relation to increasing and/or accelerating fire



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Section of Environmental Analysis

April 7, 1999

Mr. Stephen G. Thornhill
Burns & McDonnell
P.O. Box 419173
Kansas City, MO 64063

Re: Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation --
Upgrade and Expansion -- Comment Summary Package #3

Dear Mr. Thornhill:

Enclosed please find the following items concerning comments/hotline calls received on the Final Scope of Study for the proposed construction and operation of the Dakota, Minnesota and Eastern Railroad (DM&E):

- Graphs (3) summarizing the number of comments/hotline calls, origin, and issues identified.
- A copy of all comments received between March 11, 1999 and March 31, 1999 separated by state.

As of March 31, 1999, a total of 268 participants have either submitted comments or made requests through SEA's Environmental Hotline. It is important to note that some participants have either submitted more than one comment or made more than one request through the hotline. Comments received in the form of comment response forms, comment response cards, and petitions are not entered into the formal docket but are treated as part of the environmental record. Issues raised through such mass mailings are being tracked and considered through the environmental review process.

If you have any questions or comments, please feel free to contact me at (202) 565-1545.

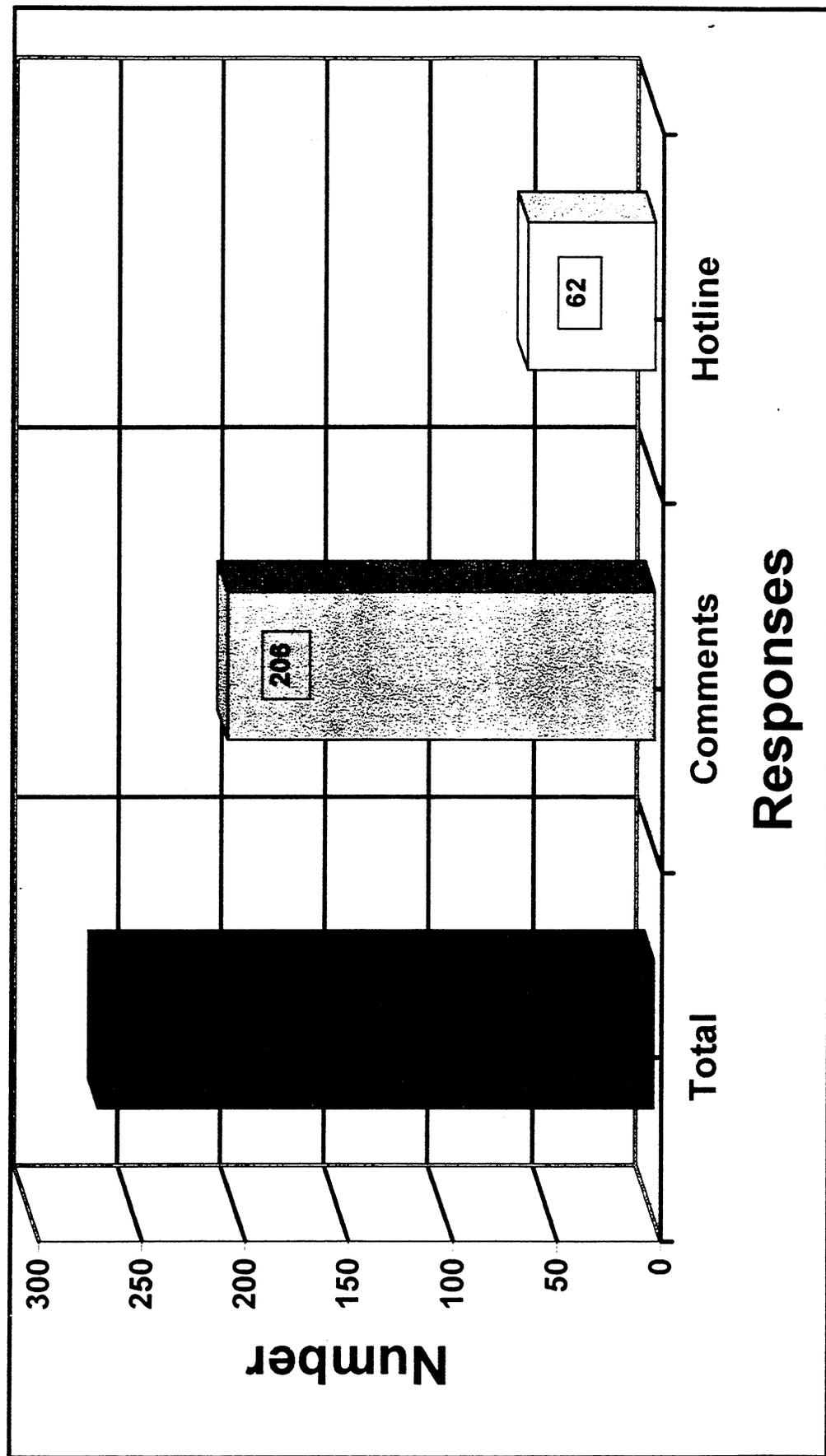
Sincerely yours,

Victoria Rutson
Project Manager

Enclosures

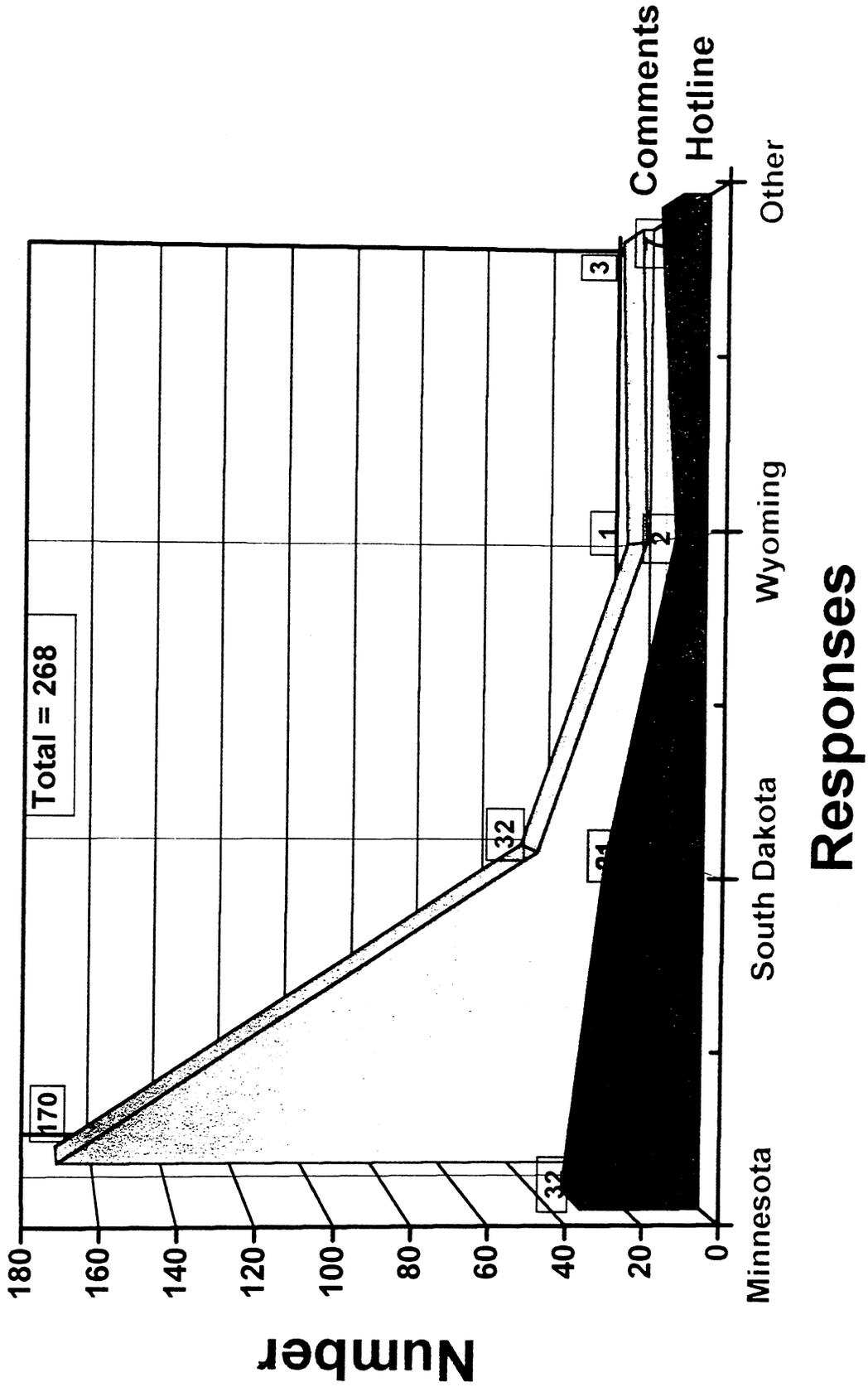
DME - Number of Responses

March 11, 1999 through March 31, 1999



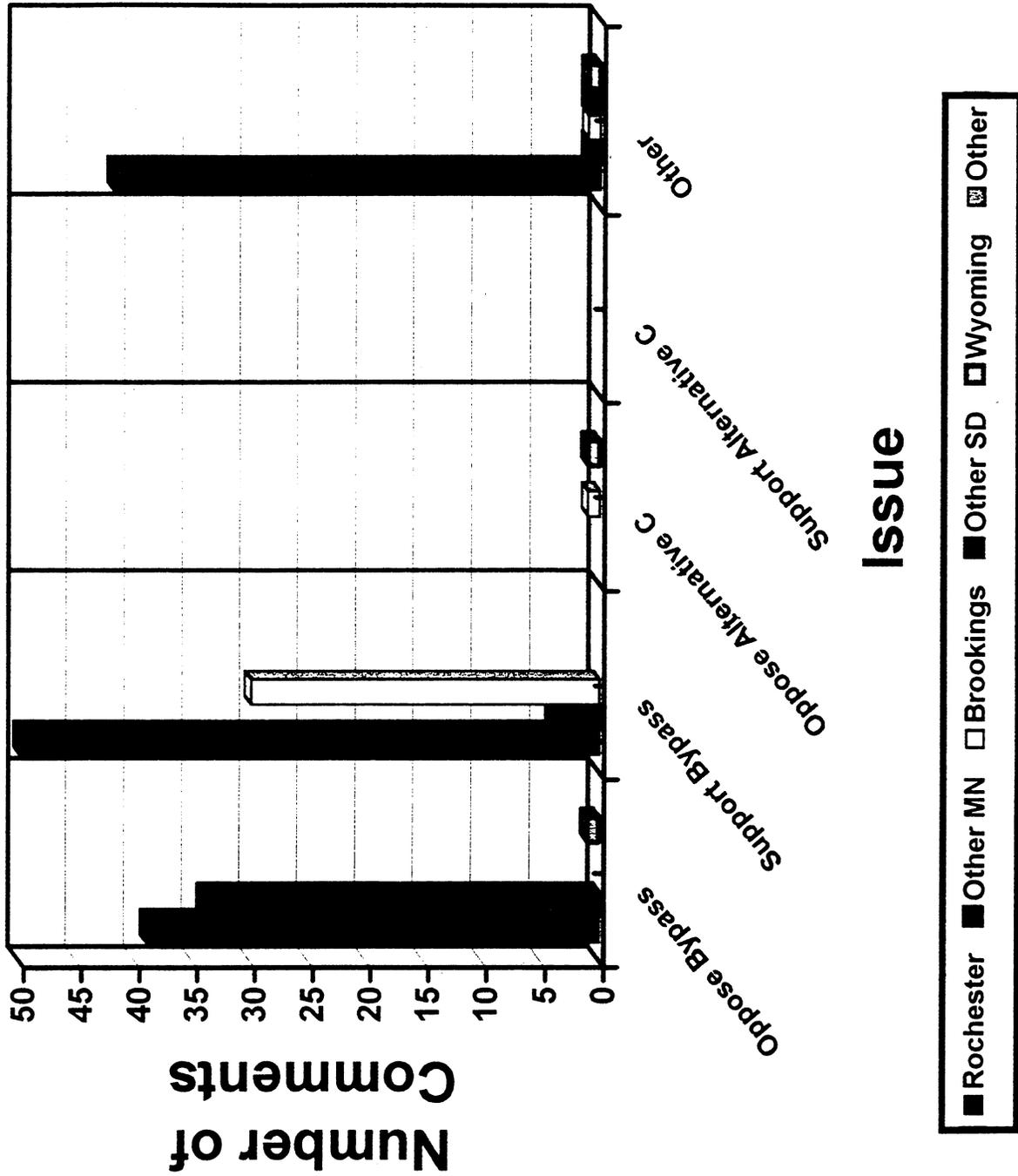
DME - Responses by State

March 11, 1999 through March 31, 1999



DME - Issues Identified by State and City

March 11, 1999 through March 31, 1999





SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Section of Environmental Analysis

April 14, 1999

Mr. Stephen G. Thornhill
Burns & McDonnell
P.O. Box 419173
Kansas City, MO 64063

Re: Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation --
Upgrade and Expansion -- Comments Received Between April 1 and April 9, 1999

Dear Mr. Thornhill:

Enclosed please find a copy of all comments on the Final Scope of Study for the proposed construction and operation of the Dakota, Minnesota and Eastern Railroad received between April 1 and April 9, 1999. The comments are separated as follows: Minnesota, Rochester, South Dakota, Brookings, Wyoming, and Other. In an effort to forward these comments to you prior to your meeting in Denver on April 19 and 20, 1999, a comment summary is not included, but will follow soon.

As of April 9, we received 791 submissions from Rochester, Minnesota on a form that appeared in the local Rochester newspapers. We are not including a copy of all submissions, but only a single sample which is representative of these submissions.

If you have any questions or comments, please feel free to contact me at (202) 565-1545.

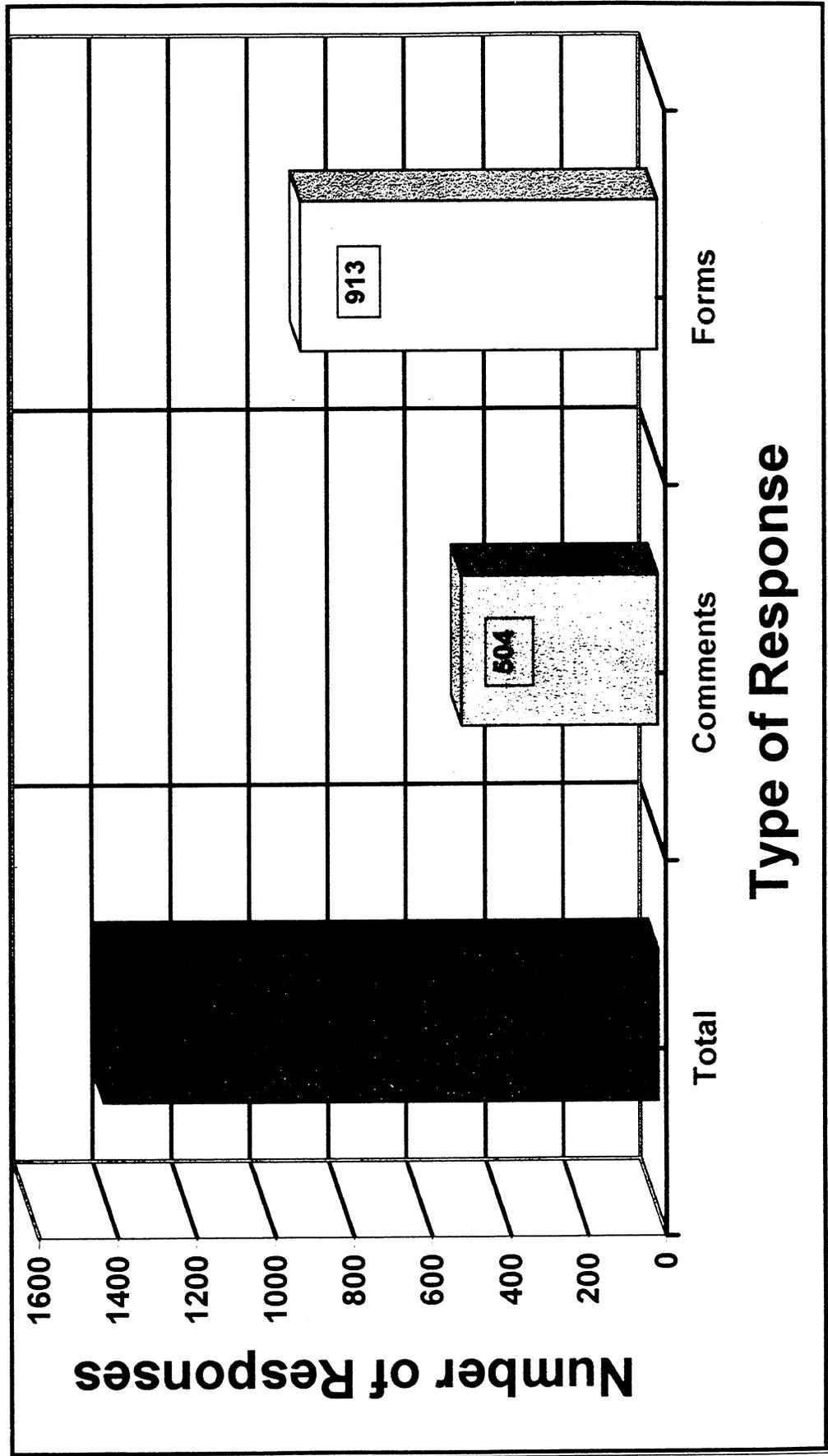
Sincerely yours,

Victoria Rutson
Project Manager

Enclosures

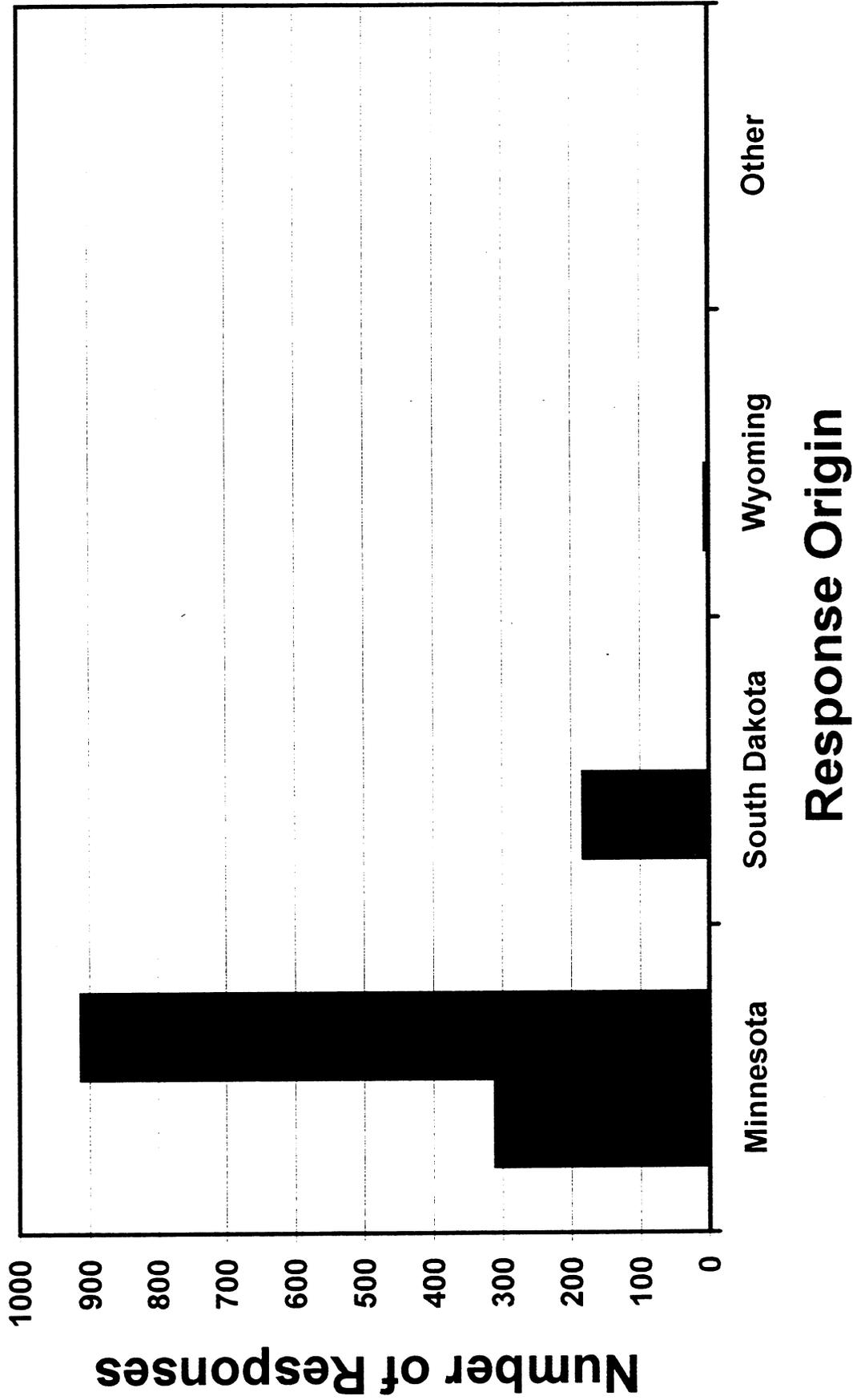
DME - Number and Type of Response

Comment Summary # 4



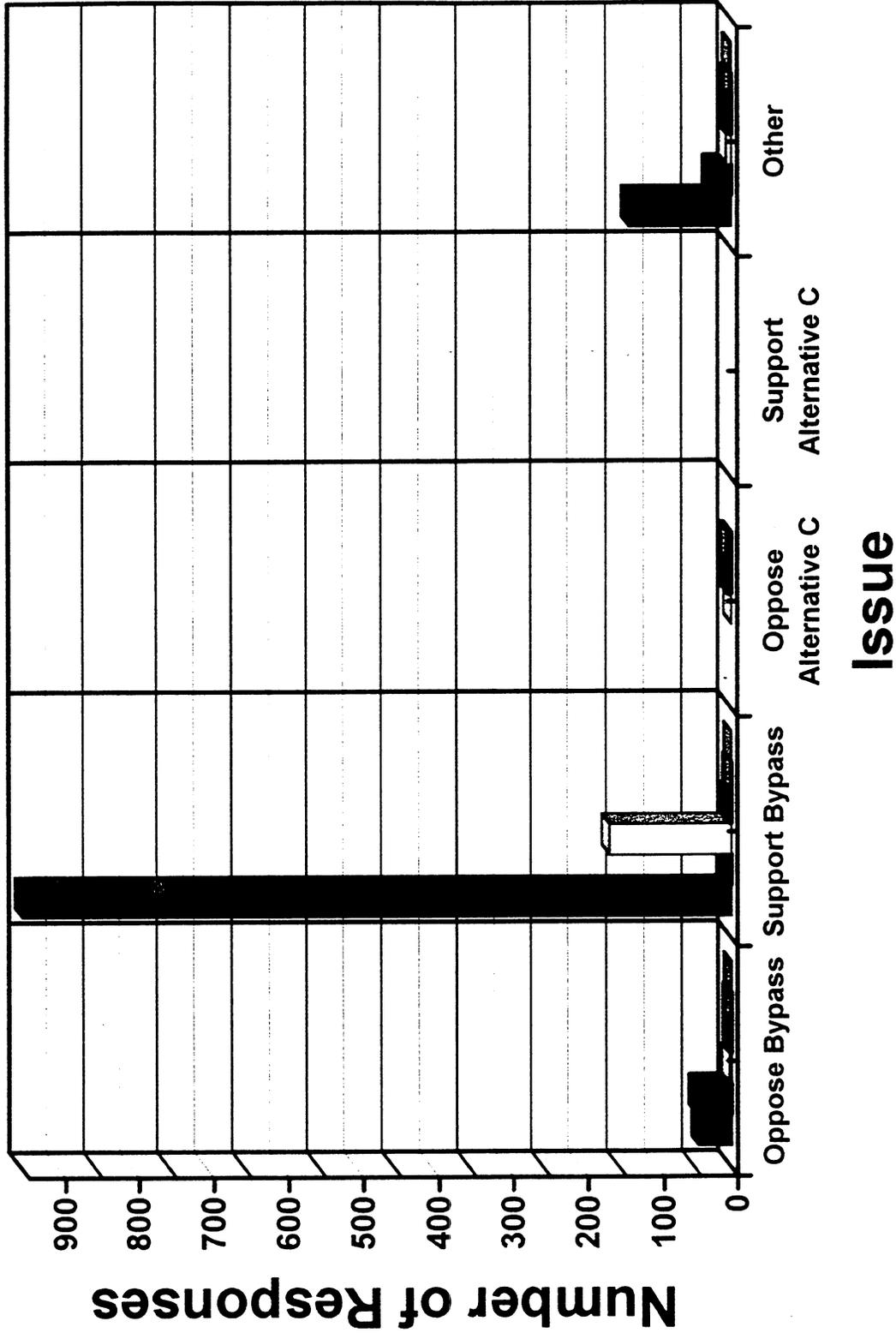
DME - Responses by State

Comment Summary #4



DME - Issues Identified by Origin

Comment Summary #4





SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Section of Environmental Analysis

May 18, 1999

Mr. Stephen G. Thornhill
Burns & McDonnell
P.O. Box 419173
Kansas City, MO 64063

Re: Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation --
Upgrade and Expansion -- Comment Summary #5

Dear Mr. Thornhill:

Enclosed please find a copy of all comments on the Final Scope of Study for the proposed construction and operation of the Dakota, Minnesota and Eastern Railroad received between April 10 and April 20, 1999. The comments are separated as follows: 1) Minnesota, 2) Rochester, 3) South Dakota, 4) Brookings, 5) Wyoming, and 6) Other. Also enclosed are two graphs which summarize the number of comments/hotline calls, origin, and issues identified for the comment period specified above.

In addition, we have enclosed four graphs that summarize all the comments/hotline calls received on the Final Scope (March 10, 1999 to April 20, 1999).

If you have any questions or comments, please feel free to contact me at (202) 565-1545.

Sincerely yours,

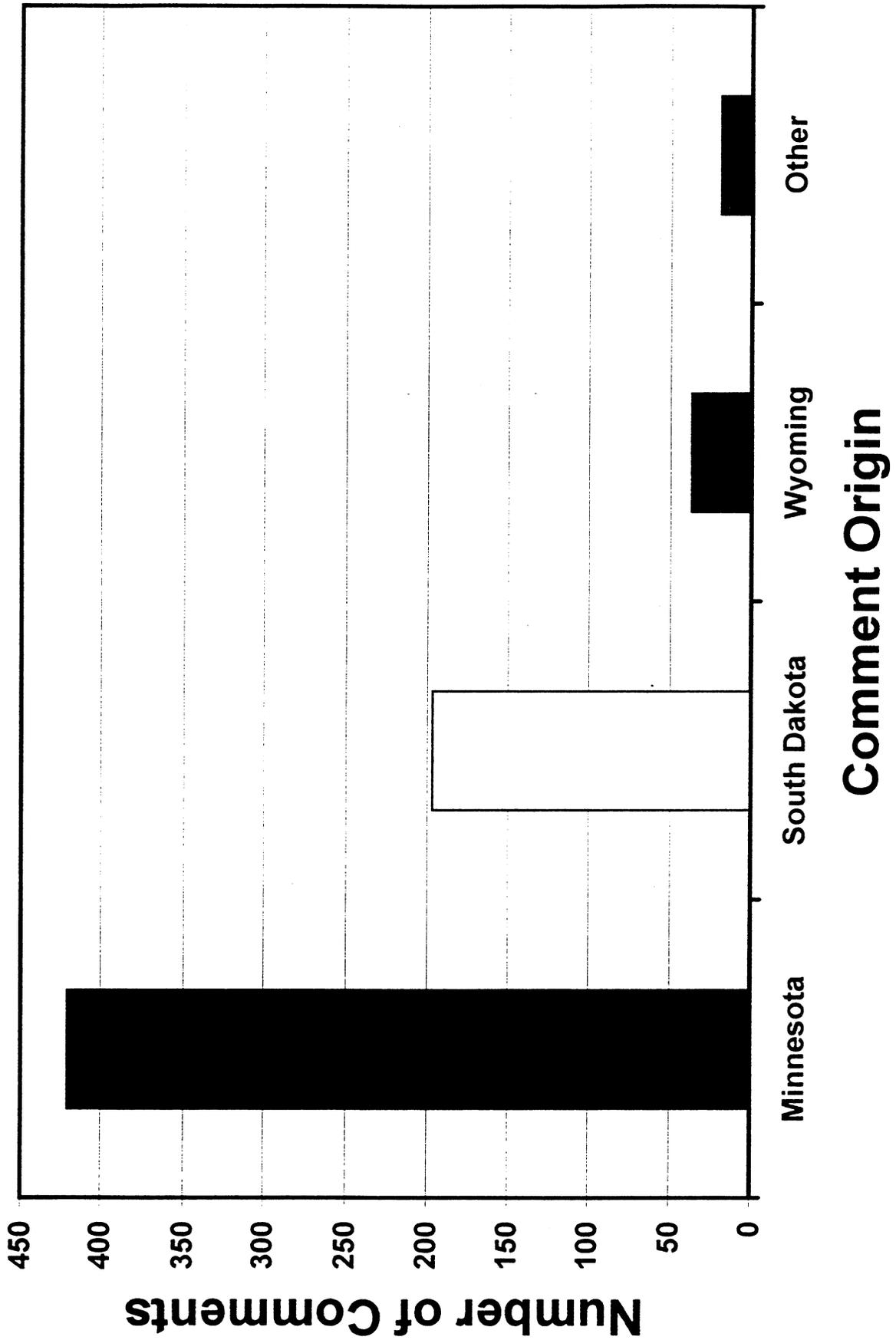
Victoria Rutson
Project Manager

Enclosures

DME - Origin of Comments

Comment Summary #5

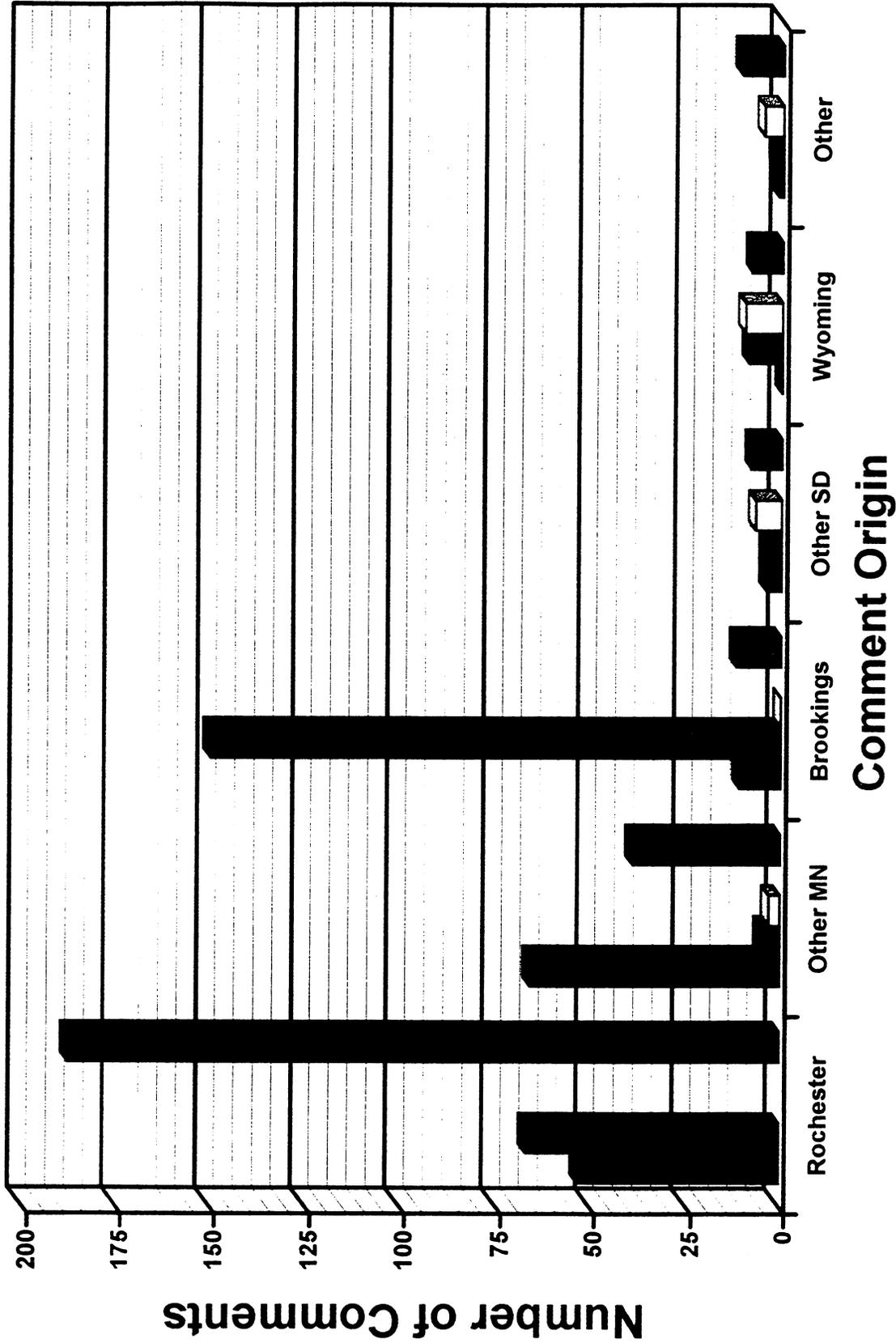
April 10 - 20, 1999



DME - Origin of Issues

Comment Summary #5

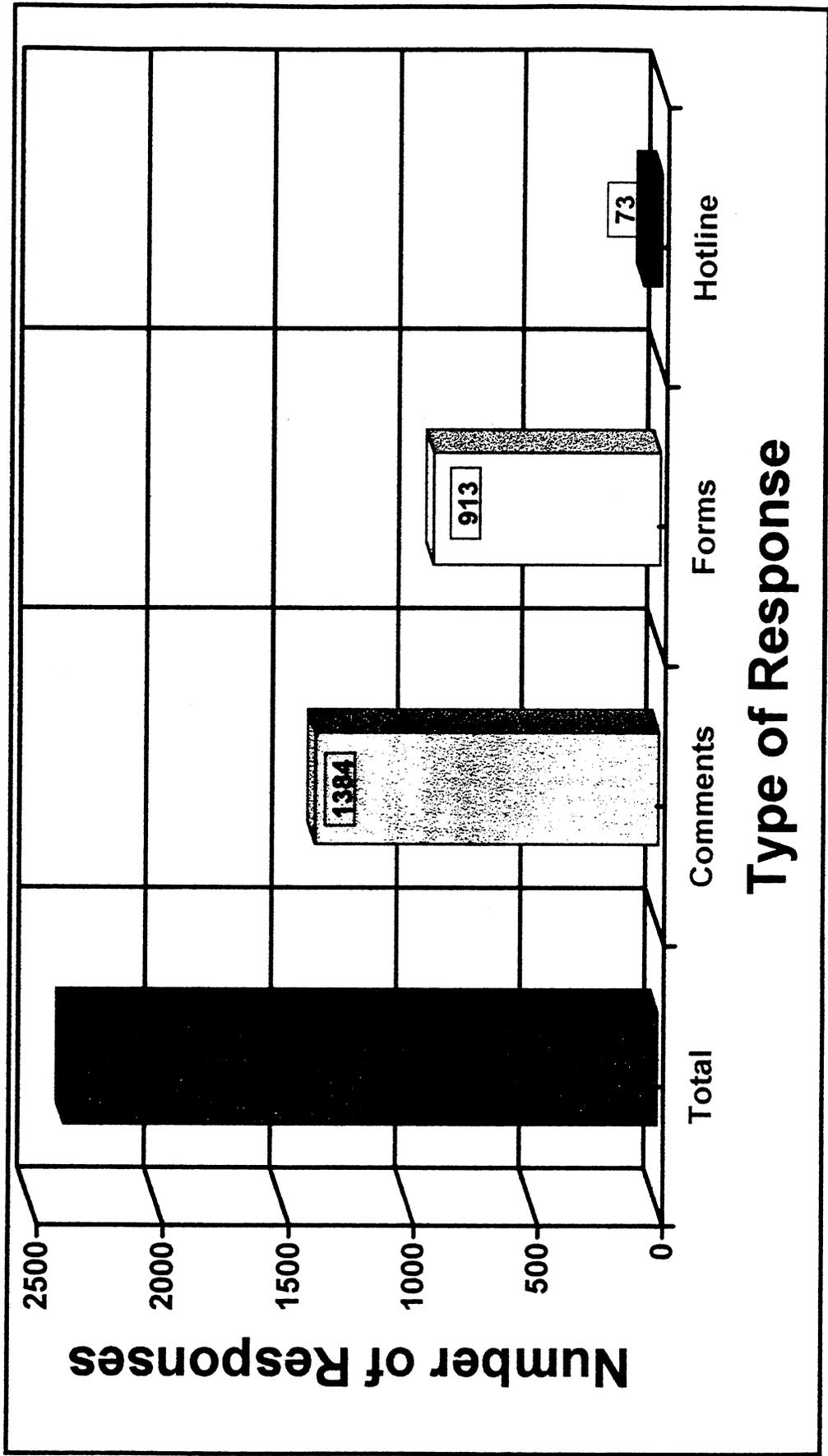
April 10 - 20, 1999



■ Oppose Bypass ■ Support Bypass □ Oppose Alternative C ■ Support Alternative C ■ Other

DME - Number and Type of Response

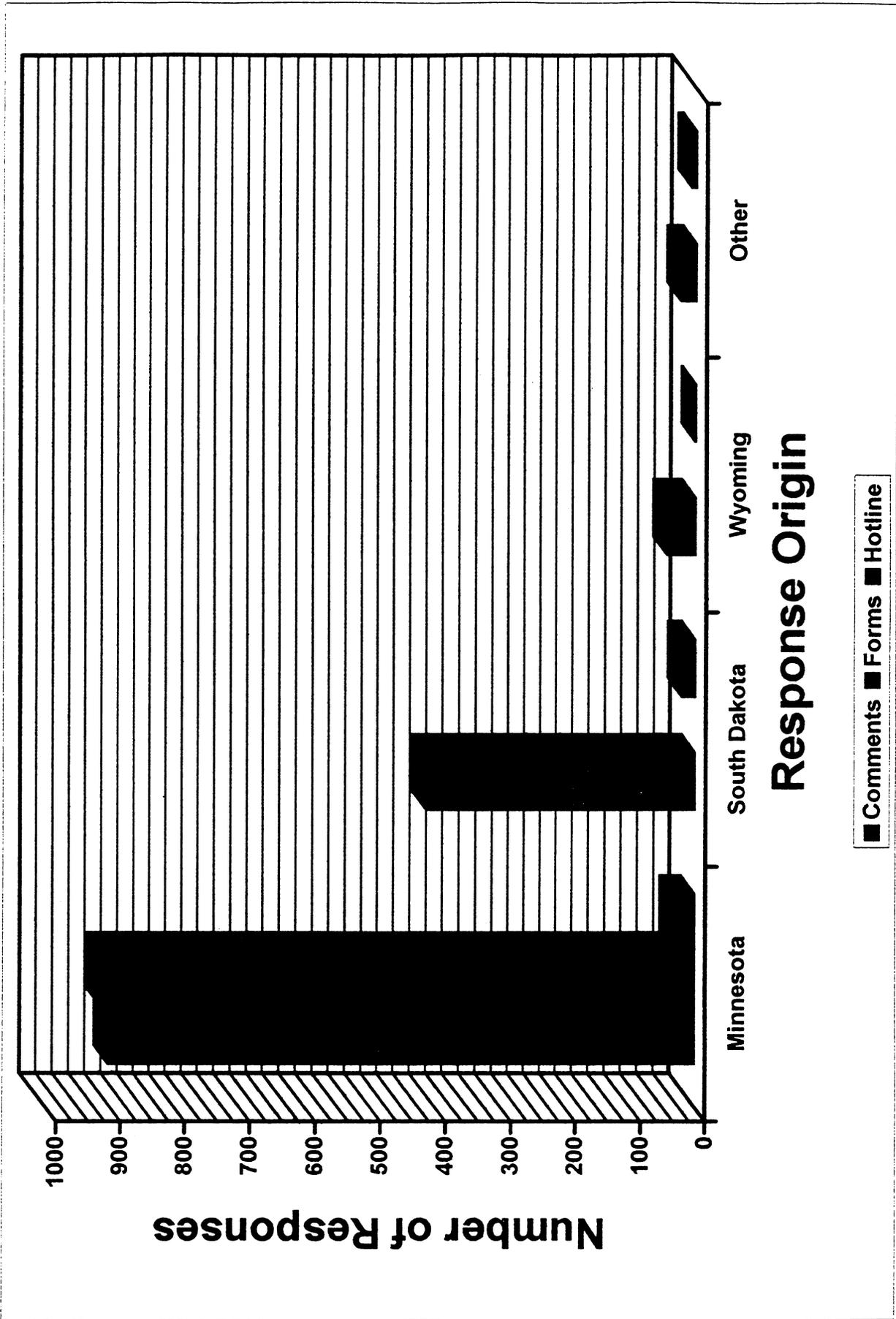
For Final Scope
March 11, 1999 through April 20, 1999



DME - Origin/Type of Response

For Final Scope

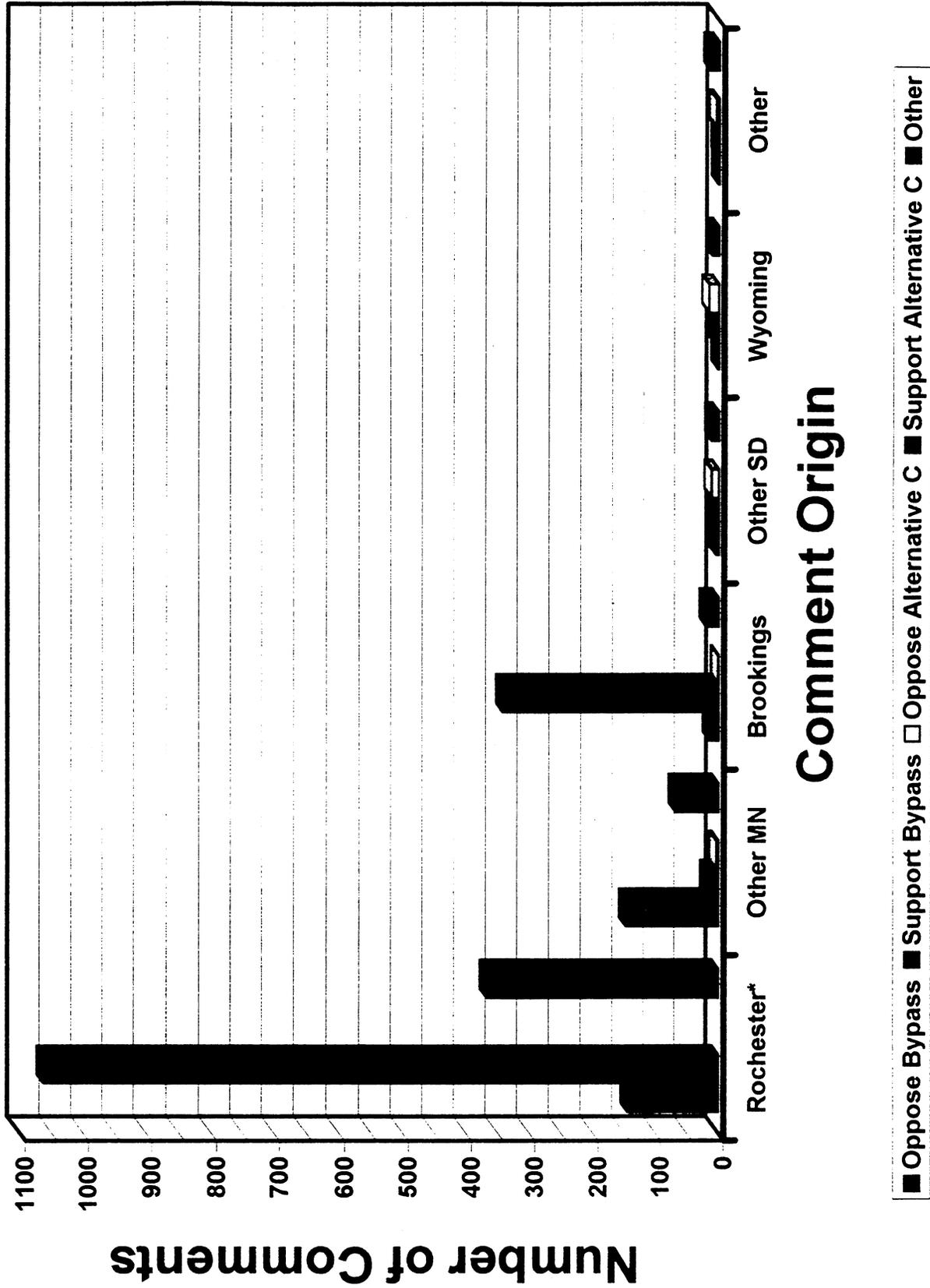
March 11, 1999 through April 20, 1999



DME - Origin of Issues

For Final Scope

March 11, 1999 through April 20, 1999

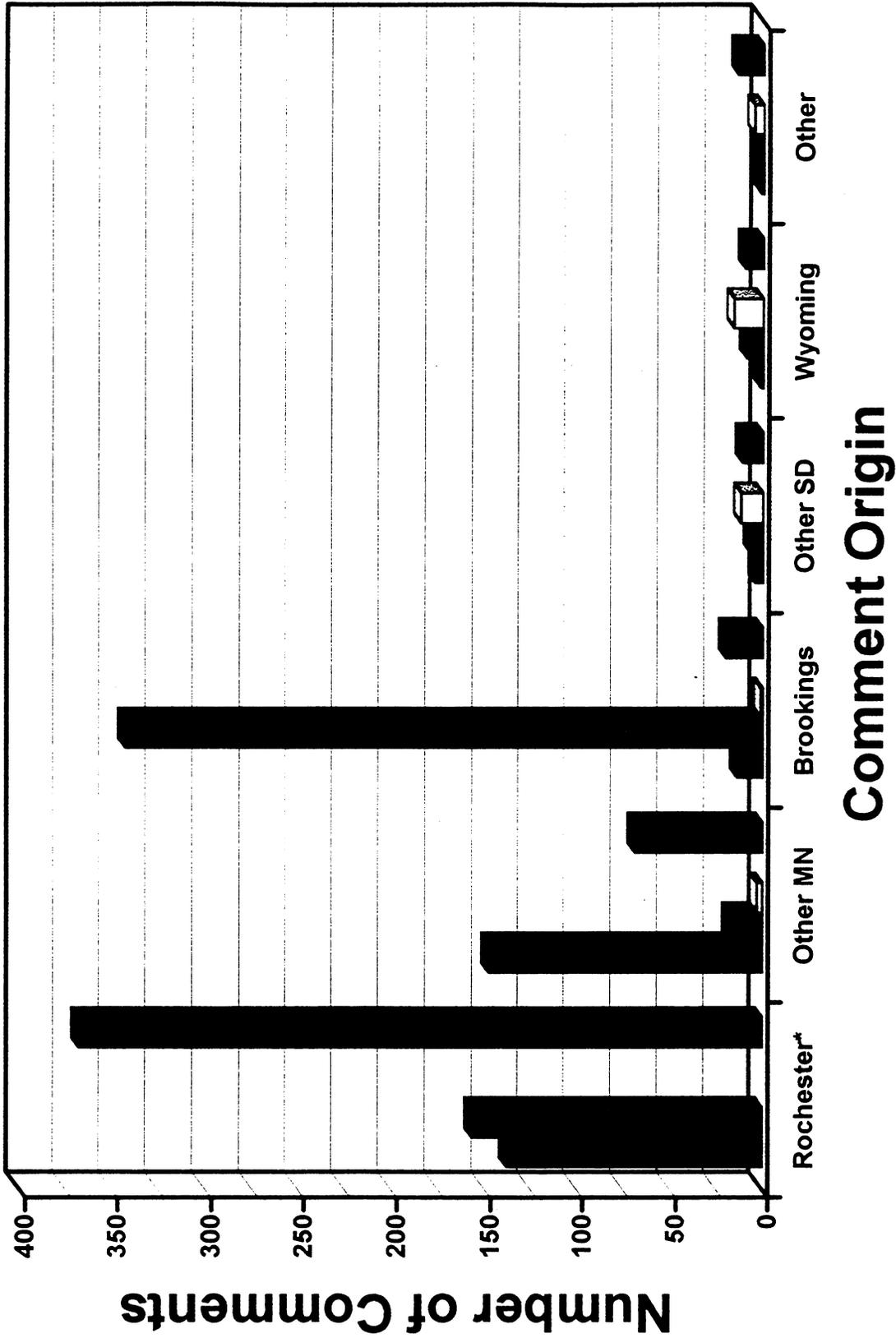


* Includes comment forms

DME - Origin of Issues

For Final Scope

March 11, 1999 through April 20, 1999



■ Oppose Bypass ■ Support Bypass □ Oppose Alternative C ■ Support Alternative C ■ Other

* Excludes comment forms



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Section of Environmental Analysis

July 6, 1999

Mr. Stephen G. Thornhill
Burns & McDonnell
P.O. Box 419173
Kansas City, MO 64063

Re: Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation --
Upgrade and Expansion -- Comment Summary #6

Dear Mr. Thornhill:

Enclosed please find a copy of all comments on the Final Scope of Study for the proposed construction and operation of the Dakota, Minnesota and Eastern Railroad received between April 21 and June 10, 1999. The comments are separated as follows: 1) Minnesota, 2) Rochester, 3) South Dakota, 4) Brookings, 5) Wyoming, and 6) Other. Also enclosed are the following:

- a) Two graphs which summarize the number of comments/hotline calls, state or city of origin, and issues identified for the comment period specified above.
- b) A graph that summarizes all the comments/hotline calls received on the Final Scope (March 10, 1999 to June 10, 1999).
- c) An updated Contact List.

If you have any questions or comments, please feel free to contact me at (202) 565-1545.

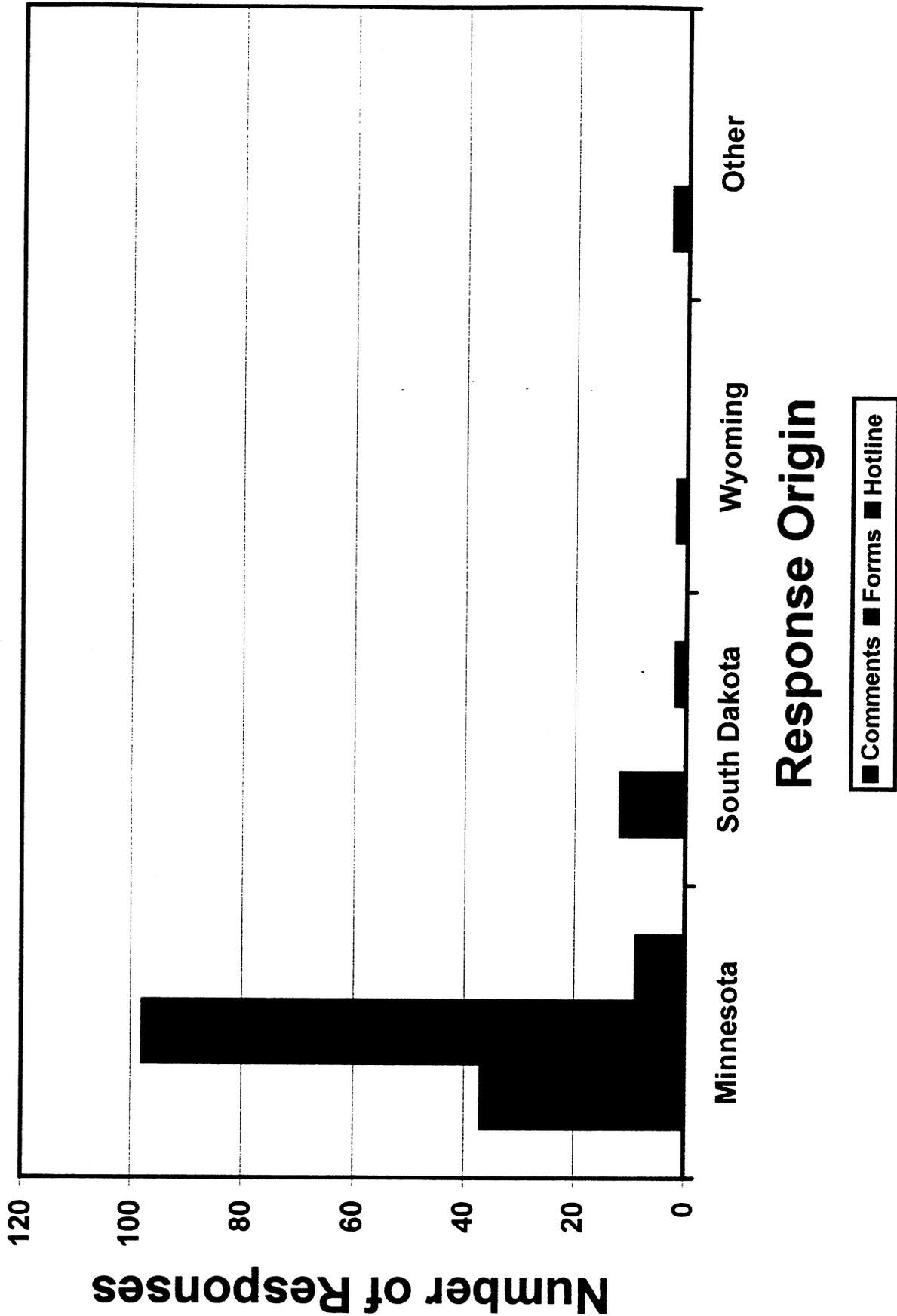
Sincerely yours,

Victoria Rutson
Project Manager

Enclosures

DME - Origin of Comments

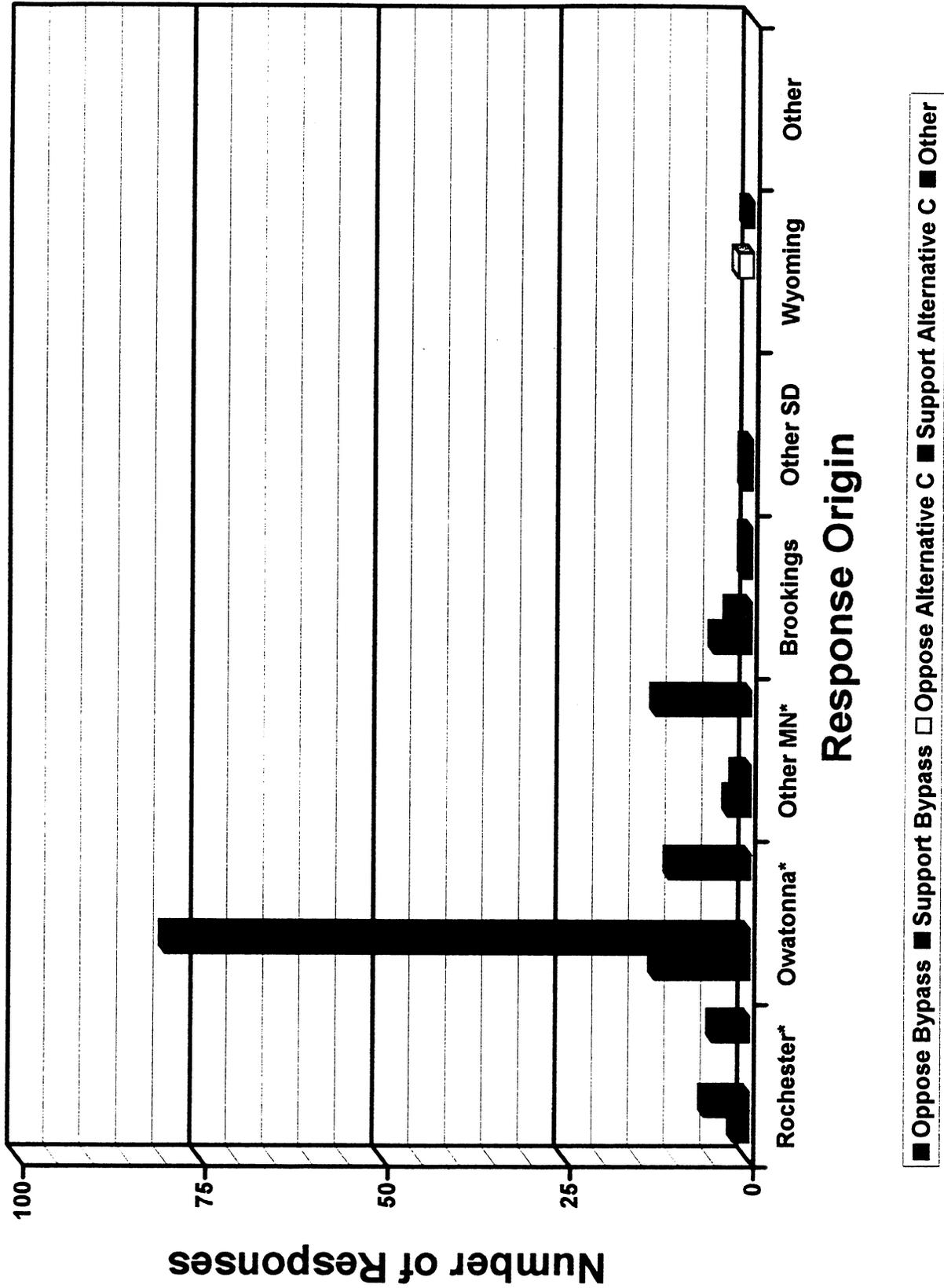
Comment Summary # 6
April 21 - June 10, 1999



DME - Origin of Issues

Comment Summary # 6

April 21- June 10, 1999

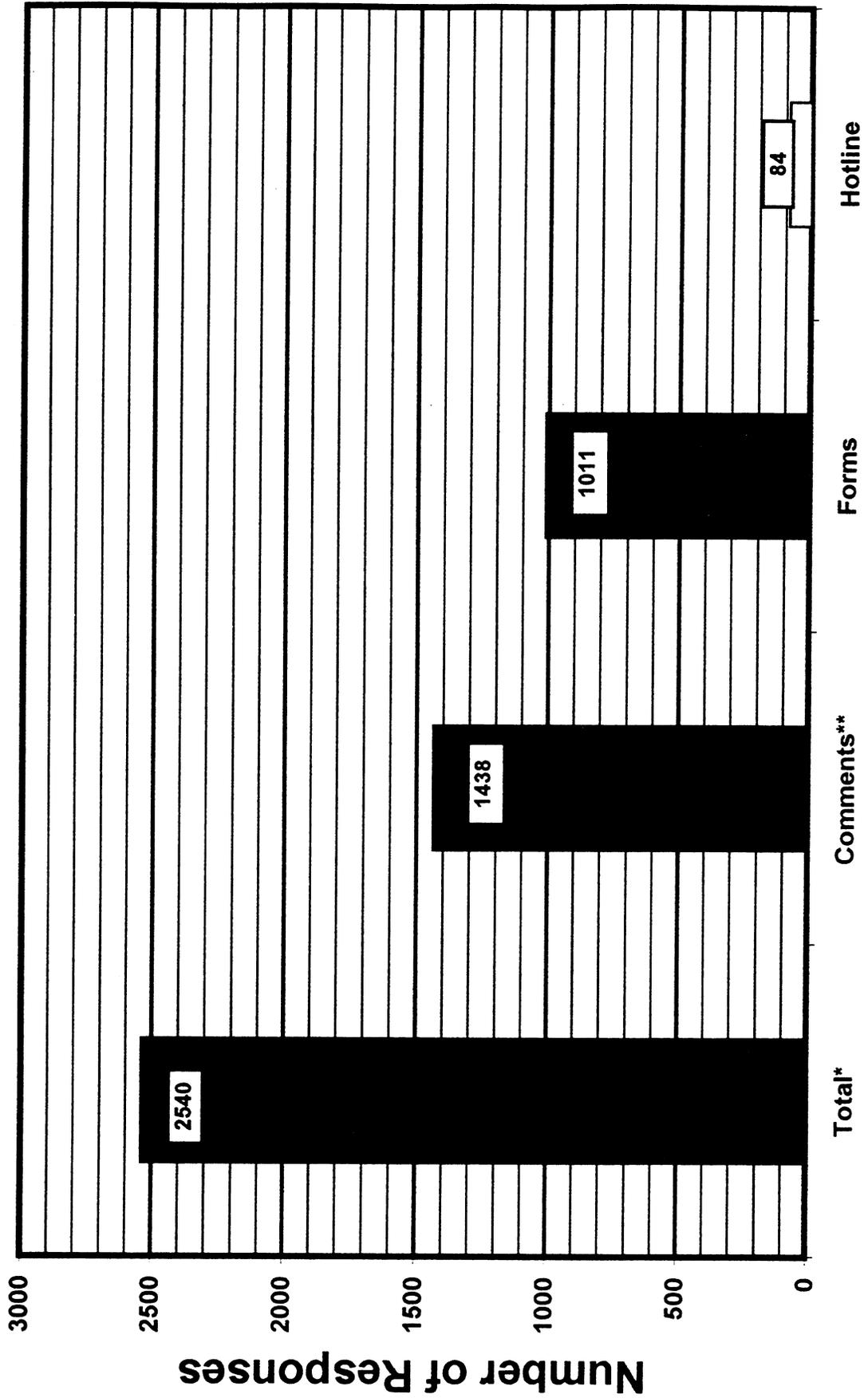


* Includes Comment Forms

DME - Total Number of Responses

Comment Summary # 6

March 10 - June 10, 1999



Total and Type of Response

* Comments, forms, and hotline calls



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Section of Environmental Analysis

August 13 1999

Mr. Stephen G. Thornhill
Burns & McDonnell
P.O. Box 419173
Kansas City, MO 64063

Re: Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation --
Upgrade and Expansion -- Comment Summary #7

Dear Mr. Thornhill:

Enclosed please find a copy of all comments on the Final Scope of Study for the proposed construction and operation of the Dakota, Minnesota and Eastern Railroad received between June 11 and July 13, 1999. The comments are separated as follows: 1) Erratas and Rebuttals to Bypass Proposals, 2) Minnesota, 3), Owatonna, 4) Rochester, 5) South Dakota, 6) Brookings, 7) Wyoming, and 8) Other.

Also enclosed are the following:

- a) Three graphs which summarize the number of comments/hotline calls, state or city of origin, and issues identified for the comment period specified above.
- b) A graph that summarizes all the comments/hotline calls received on the Final Scope (March 10, 1999 to July 13, 1999).

If you have any questions or comments, please feel free to contact me at (202) 565-1545.

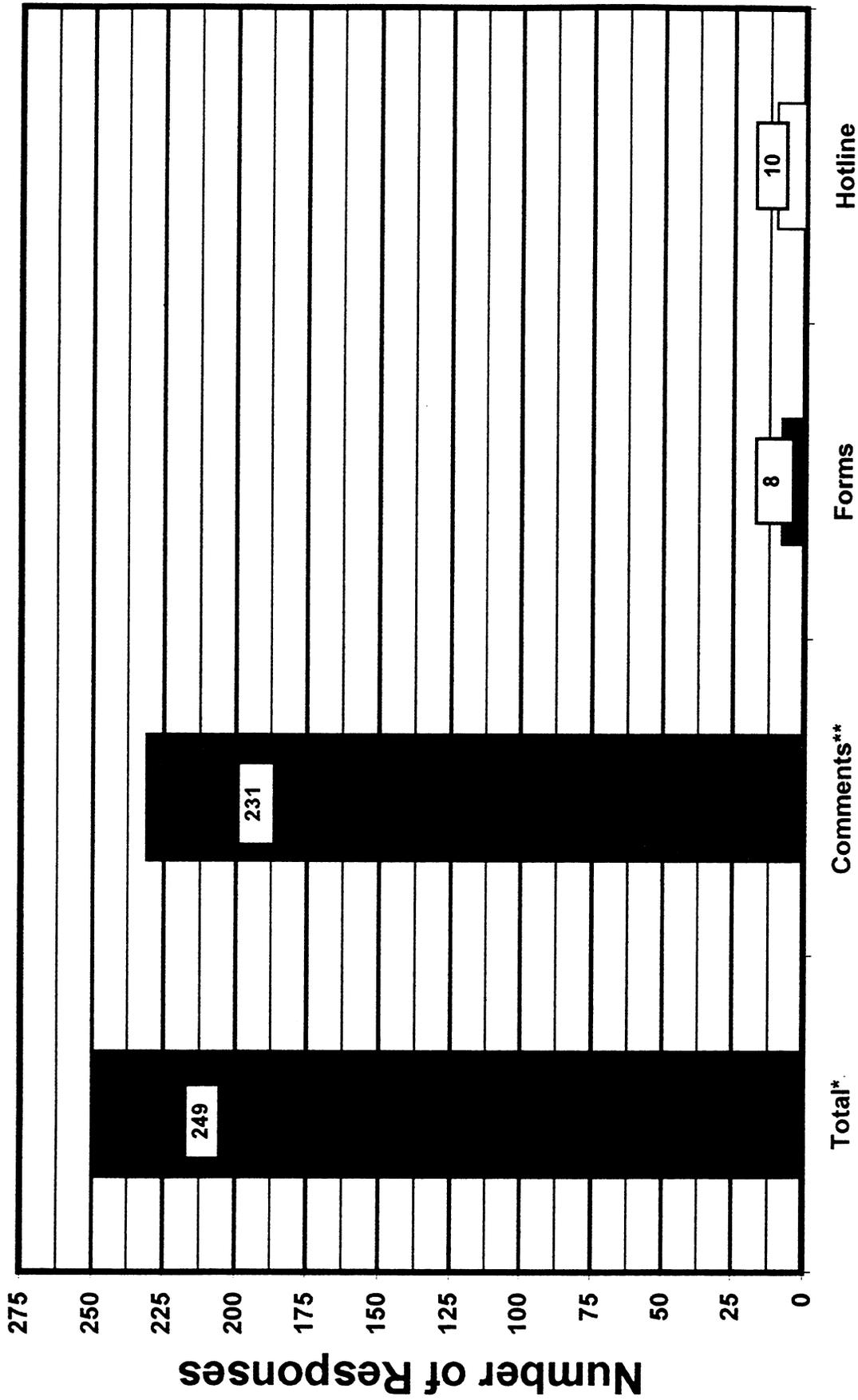
Sincerely yours,

Victoria J. Rutson
Project Manager

Enclosures

DME - Total Number of Responses

Comment Summary # 7
June 11 - July 13, 1999

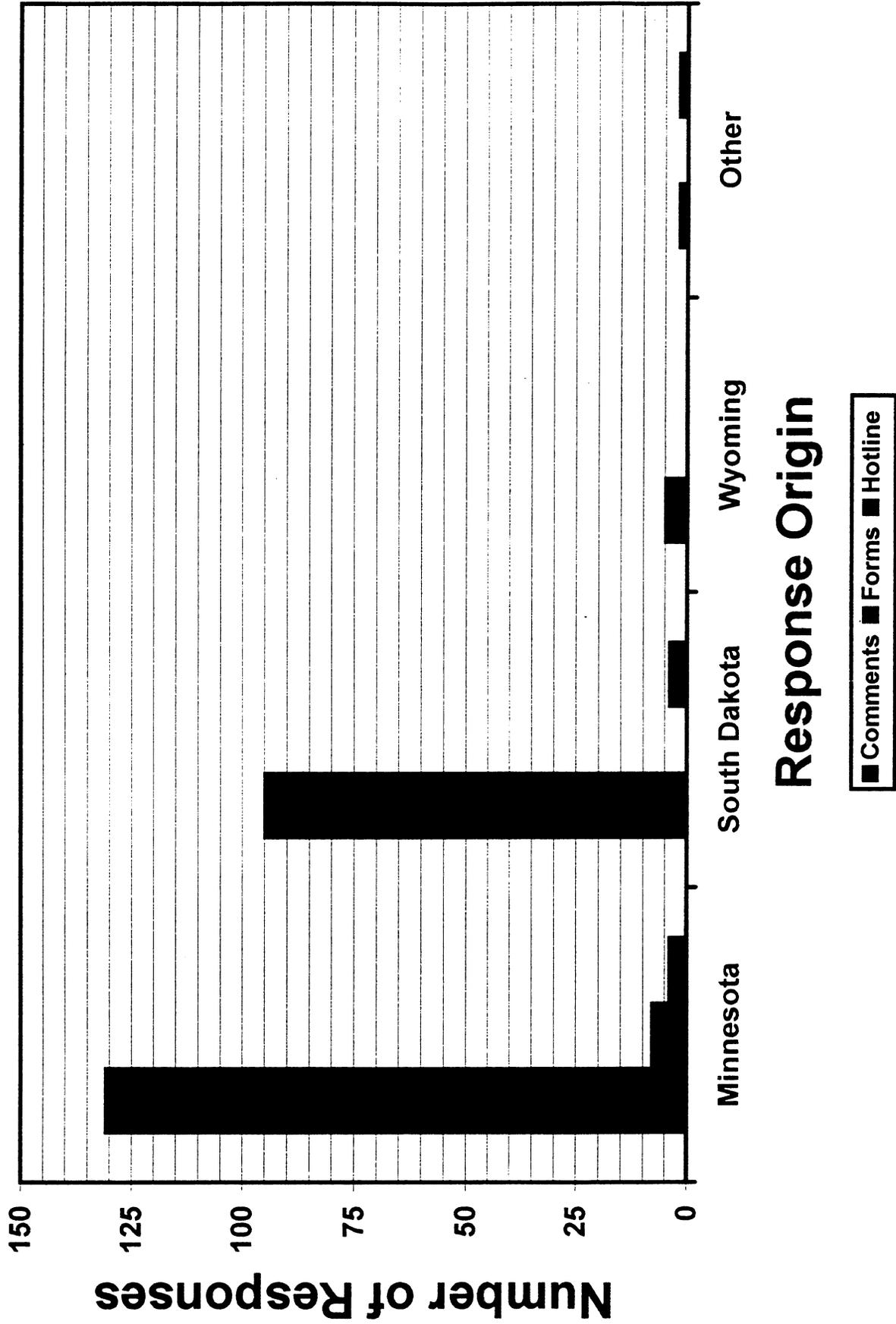


Total and Type of Response

* Comments, forms, and hotline calls

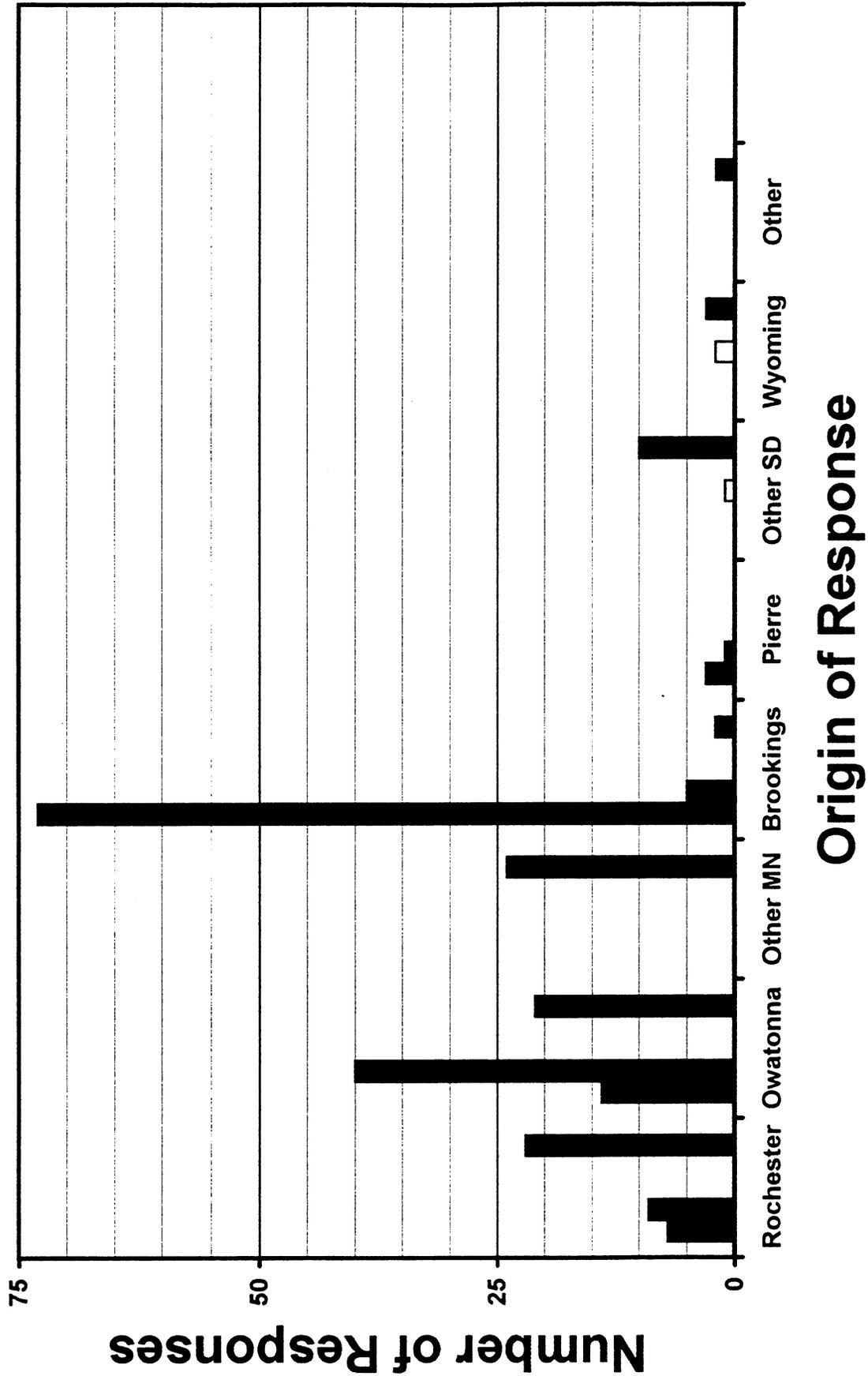
DME - Origin of Comments

Comment Summary # 7
June 10 - July 13, 1999



DME - Origin of Issues

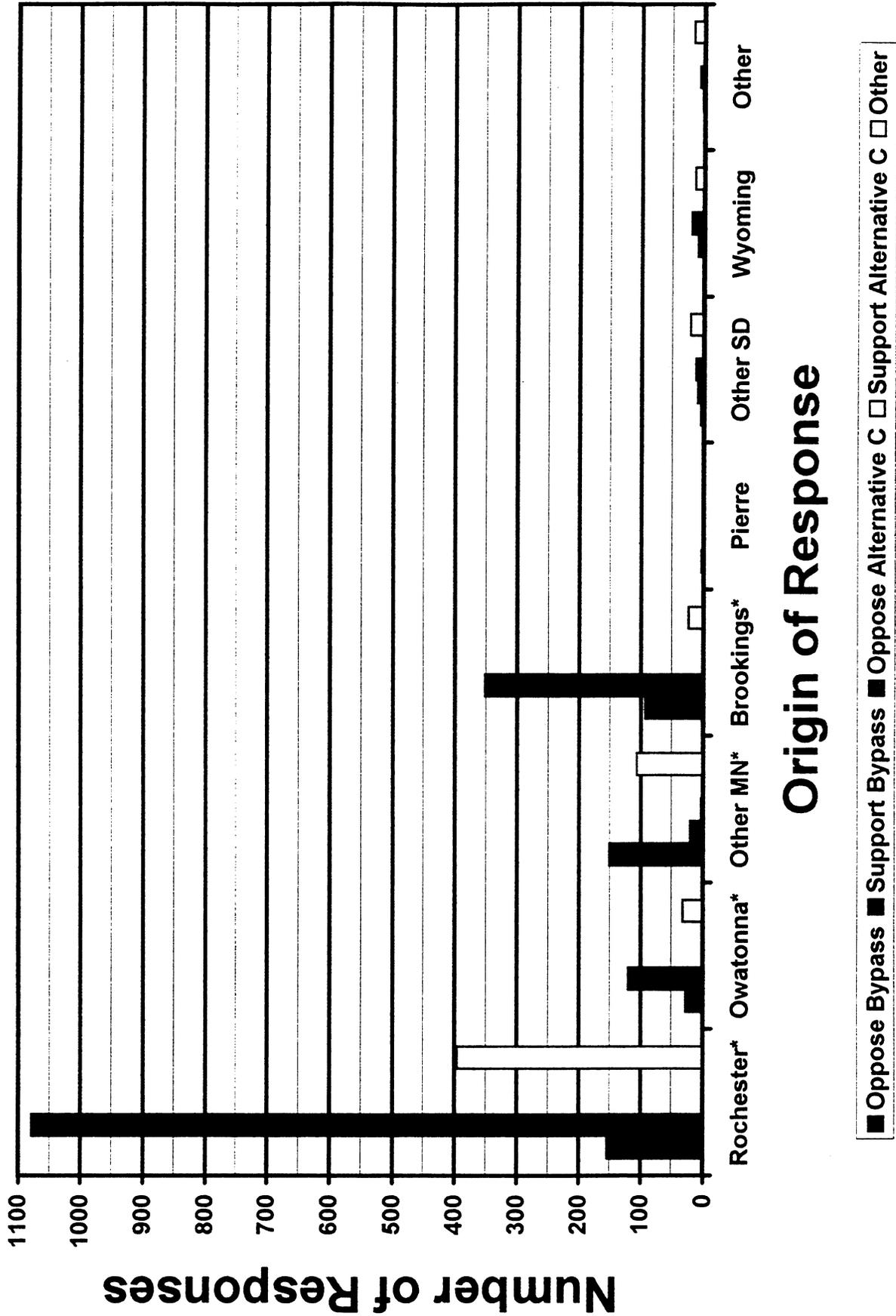
Comment Summary # 7
June 11 - July 13, 1999



■ Support Bypass ■ Oppose Alternative C □ Support Alternative C ■ Other

DME - Issues Identified from Comments on the Final Scope

Comment Summary # 7
 March 10 - July 13, 1999



Origin of Response

■ Oppose Bypass ■ Support Bypass ■ Oppose Alternative C □ Support Alternative C □ Other

* Includes Comment Forms



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Section of Environmental Analysis

October 1, 1999

Mr. Stephen G. Thornhill
Burns & McDonnell
P.O. Box 419173
Kansas City, MO 64141-6173

Re: Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation --
Upgrade and Expansion -- Comment Summary #8

Dear Mr. Thornhill:

Enclosed please find a copy of all comments on the Final Scope of Study for the proposed construction and operation of the Dakota, Minnesota and Eastern Railroad received between July 14 and September 10, 1999.

Also enclosed are the following:

- a) Document Summary - This is a new report which will be included in all subsequent comment summaries. This initial summary highlights significant comments received between March 10 and September 10, 1999.
- b) Two graphs which summarize the number of comments/hotline calls, state or city of origin, and issues identified for the comment period specified above.
- c) A graph that summarizes all the comments/hotline calls received on the Final Scope (March 10, 1999 to September 10, 1999).

If you have any questions or comments, please feel free to contact me at (202) 565-1545.

Sincerely yours,

Victoria J. Rutson
Project Manager

Enclosures

Administratively Confidential

**DAKOTA, MINNESOTA, AND EASTERN RAILROAD
POWDER RIVER BASIN EXPANSION PROJECT**

DOCUMENT AND COMMENT SUMMARY

REPORT NO. 1 : MARCH 10, 1999 THROUGH SEPTEMBER 3, 1999

Total Document Summary

The DM&E files and database at the Project Office have grown to include approximately 2,700 documents since issuance of the Final Scope on March 10, 1999. (This number includes over 1,000 comment forms/postcards). Approximately 95% these are public comments. The remaining documents have been generated by the team, SEA, and the Applicants. Additionally, there are approximately 2,000 comments that were received prior to release of the Final Scope that have not been entered into the database. All substantive, pre-Final Scope comments will be entered following entry of all Final Scope comments.

Comments Received on the Final Scope

The comments generally were received from parties that either support or oppose the proposed project and/or bypass proposals, and/or requested additional project information, and/or have identified environmental concerns. NOTE: U.S. Congressional, Federal, and Tribal letters received prior to issuance of the Final Scope have been included. Documents submitted by DM&E, Congressional representatives, Tribes, and various state and local agencies and groups are summarized below.

Dakota, Minnesota, and Eastern Railroad (DM&E)

1. On 4/9/99 the applicant submits Comments on the Final Scope.
2. On 6/9/99 the applicant submits Comments on Alternative Routes Analysis.
3. On 6/18/99 the applicant submits additional information requested by the cooperating agencies in a letter dated 5/17/99.
4. On 7/12/99 the applicant submits comments on bypass proposals.
5. On 7/20/99 the applicant submits an errata to the 7/12/99 submission.
6. On 8/11/99 the applicant submits - Rapid City to Smithwick, SD Corridor Utilization.
7. On 8/12/99 the applicant submits - Request for Yard and Siding Information.
8. On 8/13/99 the applicant submits - Section 5 Segment Alternatives for Alternative C.
9. On 8/18/99 the applicant submits - Corrections to 7/14/99 submittal, siding locations.

Administratively Confidential

Congressional, U.S.

Iowa

James A. Leach, U.S. Representative - A letter dated 9/21/98 asks that consideration and approval, if appropriate, of the DM&E project be granted.

Charles Grassley, U.S. Senator - A letter dated 12/11/98 asks that the Board give strong consideration to DM&E's application.

Minnesota

David Minge, U.S. Representative - A letter dated 7/27/98 stresses that the "benefits of local service do not ride roughshod over other community concerns."

Paul Wellstone, U. S. Senator - A letter dated 11/16/98 forwards resolution from Lyon County Board of Commissioners supporting the DM&E project.

Gil Gutknecht, U.S. Representative - A letter dated 4/9/99 invites Linda Morgan, Chairwoman of the Board, to visit Rochester and examine the proposed upgrade and bypass alternative areas.

Paul Wellstone, U.S. Senator - A letter dated 4/9/99 expresses concern about the Rochester bypass and proposed staging yard near Winona. He also offers his services to ensure a just resolution.

James Oberstar, U.S. Representative - A letter dated 4/15/99 supports the DM&E project but asks that the Rochester bypass be included as a condition of approval.

Bill Luther, U.S. Representative - A letter dated 5/10/99 requests that the environmental review carefully consider the issues that have been brought to the Board's attention.

Missouri

Roy Blunt, U.S. Representative - A letter dated 11/5/98 acknowledges support for the DM&E project.

Christopher Bond, U.S. Representative - A letter dated 11/23/98 acknowledges support for the DM&E project.

Pat Danner, U.S. Representative - A letter dated 12/1/98 acknowledges support for the DM&E project.

Pennsylvania

Bud Schuster, U.S. Representative - A letter dated 10/14/98 states that only through an independent forum such as the STB can concerns, such as will be raised during review of the proposed DM&E project, be considered fairly without political bias.

Administratively Confidential

South Dakota

John Thune, U S. Representative - A letter dated 5/20/98 states his position and concerns regarding the handling of public scoping meetings.

Tom Daschle and Tim Johnson, U.S. Senators, and John Thune, U.S. House of Representative - A jointly signed letter dated 5/28/99 asks that the Board establish a procedural schedule for completing the environmental review.

Federal Agencies

US Department of Agriculture-National Resource Conservation Service (NRCS) - A letter dated 6/2/98 states that, as submitted, NRCS environmental policies are not applicable.

US Department of Interior-National Park Service - A letter dated 7/17/98 contains the following: 1) the Draft Scope of Study is appropriate; 2) the Draft EIS should address potential impacts to the following: Badlands National Park, Jewel Cave National Monument, Mount Rushmore National Memorial, and Wind Cave National Park; 3) the Badlands and Wind Cave National Parks are designated as Class I under the Clean Air Act; 4) Potential for establishment of a Cold War Memorial along I-90 (Bill S-2284); and 5) Potential impact to sites acquired or developed with the Land and Water Conservation Fund.

US Department of Agriculture - A letter dated 12/3/98 states that the project will “increase rail capacity, improve farm income, boost rural economic development, and reduce pressure on the rural road network.”

Native American Tribes

Oglala Sioux - A letter dated 3/25/98 forwards a resolution on the DM&E project that was adopted by the Black Hills Sioux Nation Council.

Medicine Wheel Coalition - A letter dated 7/10/98 indicates that areas proposed for construction are traditional cultural use areas and also sacred sites. They also ask to be fully involved in the process.

Sioux Tribe - A letter dated 11/23/99 expresses concern that their tribe was not invited to participate in the scoping process.

Minnesota

City of Rochester - On 4/9/99 the City augments their bypass proposal.

Citizen's Against the Bypass - 4/10/99 an attorney representing this coalition submits a rebuttal to the City of Rochester's Bypass proposal.

University of St. Thomas, Citizens for Railroad Sense, and Affected Citizens - On 7/12/99 the University of St. Thomas submits a rebuttal to the City of Owatonna's bypass proposal.

City of Rochester - On 6/10/99 the City responds to arguments against the City's South Bypass proposal.

Minnesota - Continued

City of Owatonna - On 6/10/99 the City submits a bypass proposal.

City of Owatonna - On 8/13/99 the City requests additional guidance and clarification from the Board concerning not only the Board's ongoing review, but also the submission of additional information.

City of Rochester - On 8/17/99 the City submits a rebuttal to the Applicant's response to the City's proposed bypass.

Owatonna Township - On 8/30/99 attorney's representing the Township state that the City of Owatonna should not be allowed to submit additional information regarding their proposed bypass.

City of Mankato - On 8/24/99 the City stated that they will submit to the Board, by October 10, 1999, additional data and comments relative to potential impacts and required mitigation. The comments result from negotiations with DM&E that resulted in a Community Partnership Agreement signed on July 6, 1999. The City would like the Board to review the potential impacts resulting from the proposed DM&E project and Union Pacific traffic. The City further hopes that the existence of the Community Partnership Agreement does not in any way influence the Board's commitment to undertake an objective analysis and comparison of the environmental impacts of all of the proposed Mankato Bypass alternatives, including the Southern Bypass.

University of St. Thomas, Citizens for Railroad Sense, and affected citizens - Owatonna - On 8/27/99 attorneys representing the above mentioned parties submit comments in opposition to the City of Owatonna's request to submit additional bypass materials. They indicate that the submission of additional materials would require a response, thus causing further delay and hardship. Additionally, they object to the City's attempt to amend its bypass proposal by adding attachments. They request that the attachments be stricken and returned. However, they do concur with the City's request to further address mitigation of the existing route and early determination of bypass feasibility.

South Dakota

State of - On 6/10/99 Governor Janklow submits bypass proposals for the Cities of Brookings and Pierre.

Citizens Against the Brookings Bypass - On 7/8/99 this citizens group submits a rebuttal in opposition to the City of Brookings bypass proposal.

James E. Stark - representing the Mid-States Coalition for Progress - On 8/10/99 Mr. Stark submits a comment asking that detailed project information be released prior to the Draft EIS and that the Board consider establishing a number of repositories (e.g., libraries, court houses, etc.) for placement of these materials. The Coalition also states that early dissemination of detailed project information would facilitate discussion and help resolve unnecessary anxiety.

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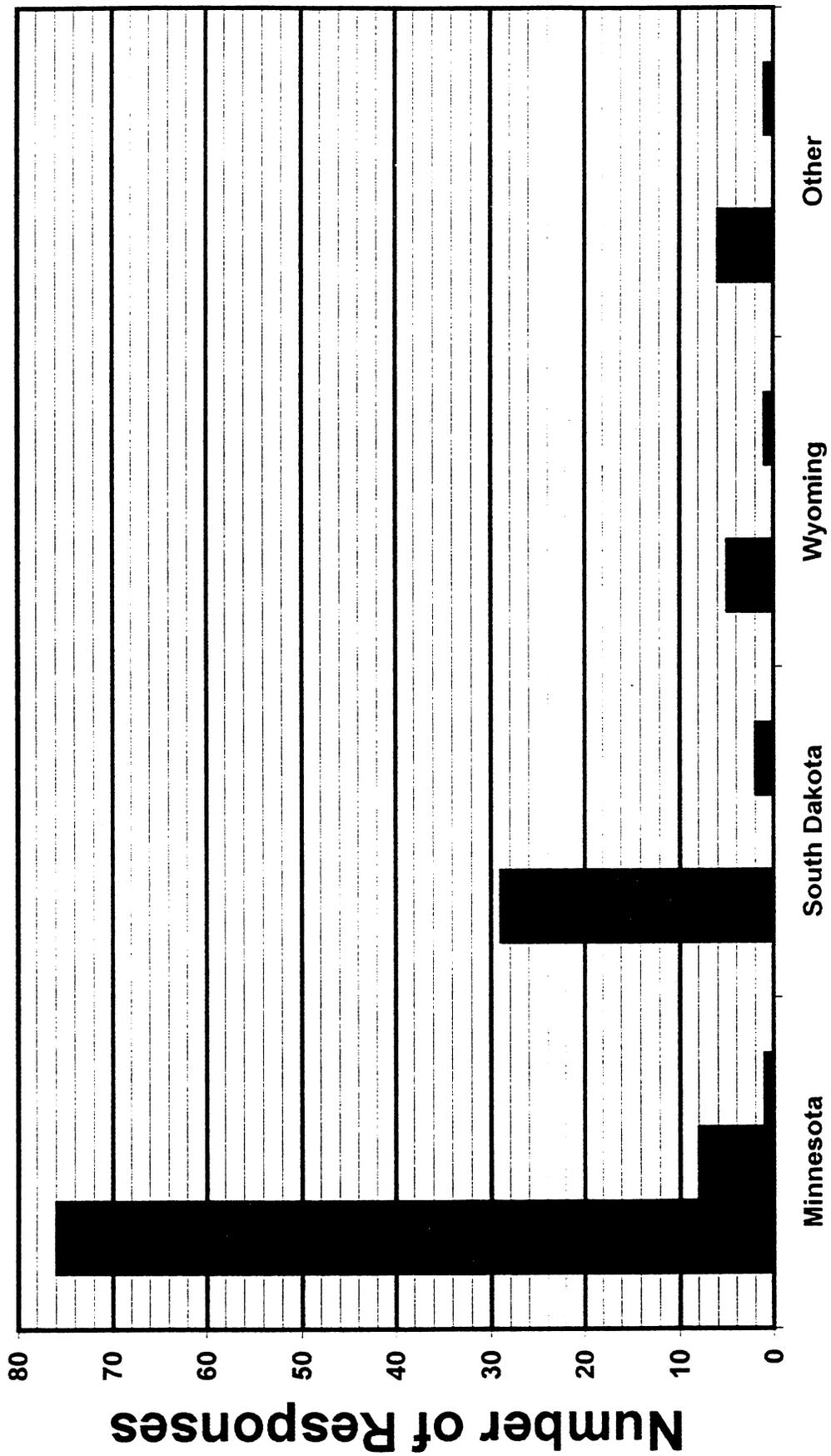
Other

Kennecott Energy - On 6/10/99, on beha'f of Kennecott Energy, attorneys submit comments on the applicant's alternatives.

DME - Comments by State

Comment Summary # 8

July 14 through September 10, 1999



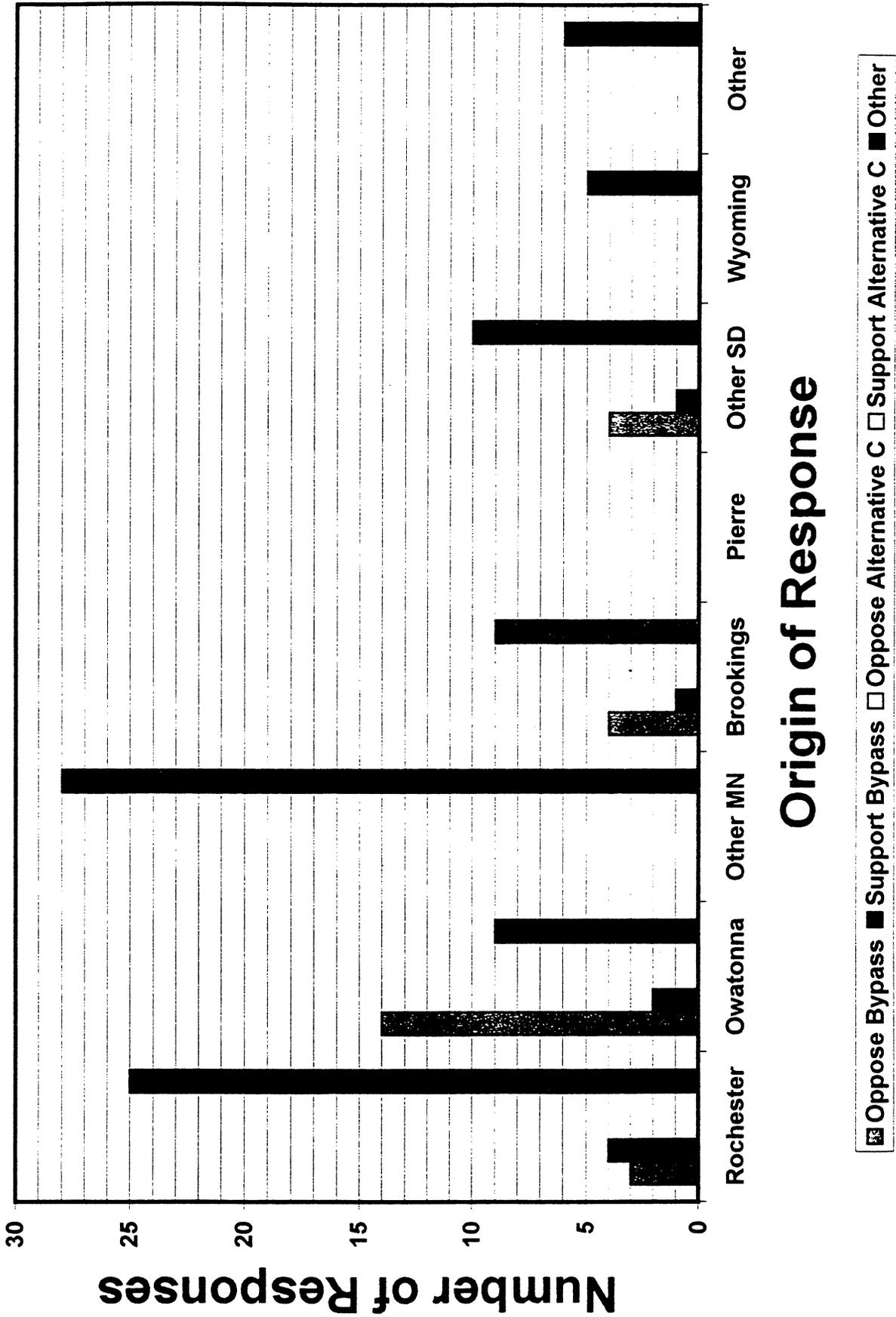
Origin of Response

■ Comments ■ Forms ■ Hotline

DME - Final Scope Issues by Origin

Comment Summary # 8

July 14 through September 10, 1999



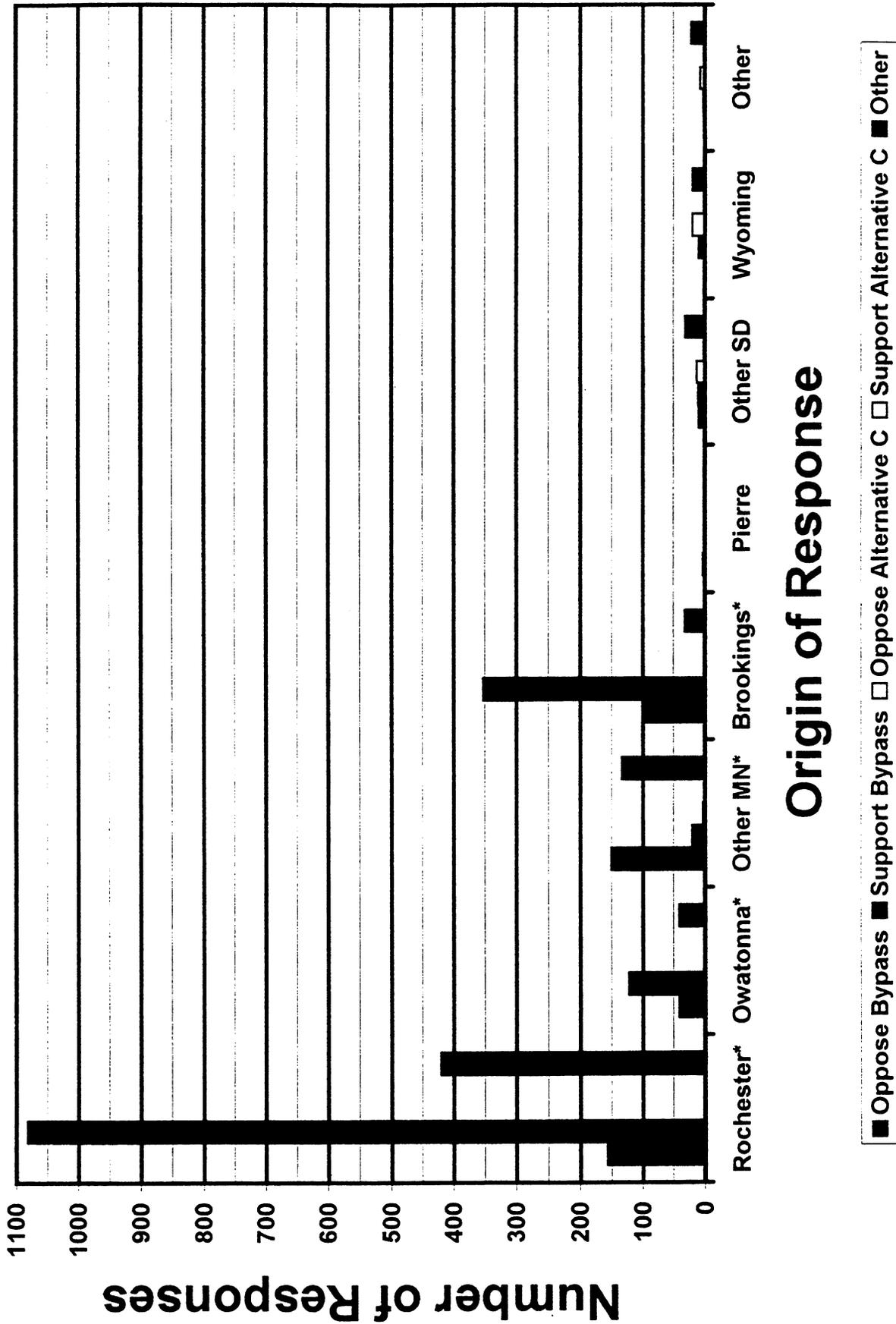
Origin of Response

Oppose Bypass
 Support Bypass
 Oppose Alternative C
 Support Alternative C
 Other

DME - Final Scope Issues by Origin

Comment Summary # 8

March 10 through September 10, 1999



Origin of Response

■ Support Bypass ■ Oppose Bypass □ Support Alternative C □ Oppose Alternative C ■ Other

* Includes Comment Forms



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Section of Environmental Analysis

January 4, 2000

Mr. Stephen G. Thornhill
Burns & McDonnell
P.O. Box 419173
Kansas City, MO 64063

Re: Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation --
Upgrade and Expansion -- Comment Summary #9

Dear Mr. Thornhill:

Enclosed please find a copy of all comments received between September 11 and December 31, 1999 on the Dakota, Minnesota and Eastern Railroad's proposed construction and operation into the Powder River Basin.

Also enclosed are the following:

- a) Document Summary #2 - This summary highlights significant comments received between September 11 and December 31, 1999.
- b) Seven graphs which summarize issues identified in comments received on the Final Scope (March 10-July 12, 1999).
- c) An updated DM&E Team Contact List.

If you have any questions or comments, please feel free to contact me at (202) 565-1545.

Sincerely yours,

Victoria J. Rutson
Project Manager

Enclosures

Administratively Confidential

**DAKOTA, MINNESOTA, AND EASTERN RAILROAD
POWDER RIVER BASIN EXPANSION PROJECT**

DOCUMENT AND COMMENT SUMMARY

REPORT NO. 2 : AUGUST 8, 1999 THROUGH DECEMBER 20, 1999

Total Document Summary

The DM&E files and database at the PAM Project Office have grown to include approximately 3,200 documents since issuance of the Final Scope on March 10, 1999. (This number includes over 1,000 comment forms/postcards). Approximately 95% of these are public comments. The remaining documents have been generated by the team, SEA, and the Applicants. Additionally, there are approximately 2,000 comments that were received prior to release of the Final Scope that have not been entered into the database. All substantive, pre-Final Scope comments will be entered.

Comments Received on the Final Scope

The comments generally were received from parties that either support or oppose the proposed project and/or bypass proposals, and/or requested additional project information, and/or have identified environmental concerns. Documents submitted by DM&E, Congressional representatives, various state and local agencies are summarized below.

Dakota, Minnesota, and Eastern Railroad (DM&E)

1. On 12/6/99 the Applicant submits the "Community Plan and Partnership Agreement for Mankato, MN" dated January 1999.
2. On 11/22/99 the Applicant submits "Amended Request for Yard and Siding Information."
3. On 10/26/99 the Applicant submits copies of the digital aerial photography alignment between Minnesota City, MN, and Wall, SD.
4. On 10/22/99 the Applicant submits a response to a letter from Steven Kalish of McCarthy, Sweeney & Harkaway thanking him for providing requested background information.
5. On 10/19/99 the Applicant submits a response to a letter dated August 31, 1999 from SEA concerning traffic levels and projections.
6. On 10/19/99 the Applicant submits a response to a letter dated October 9, 1999 from a citizen regarding the proposed construction of an underpass in Waseca, MN.

Administratively Confidential

7. On 10/11/99 the Applicant submits a letter regarding an information request concerning the projected train speed from Steven Kalish of McCarthy, Sweeney & Harkaway, P.C.

Congressional, U.S.

Minnesota

Gil Gutknecht, U.S. Representative - A letter dated 10/4/99 submitting letters from two constituents which are emblematic of the kinds of issues the proposed DM&E Project is raising in Minnesota's 1st Congressional District.

William Kuisle, State Representative - A letter dated 11/5/99 with requested analysis of ambulance and fire response time if railroad crossings are blocked along Rochester's Proposed South bypass.

South Dakota

Tom Daschle and Tim Johnson, U.S. Senators - A letter dated 9/21/99, jointly signed, reiterating their desire that the environmental review of the proposed DM&E project move forward.

Federal Agencies

US Department of Agriculture-Forest Service - Jack Craven, Director of Lands, forwards a copy of his response to a joint letter dated May 28, 1999 from U.S. Senators Tom Daschle, John Thune, and Tim Johnson to the Chief of the Forest Service regarding the DM&E's proposal.

US Department of Agriculture-Forest Service - A letter dated 11/15/99 from Wendy Schmitzer, DM&E Project Coordinator, to Kevin Schieffer, President & CEO of DM&E, and Jack Palma, Holland & Hart, requesting additional mitigation concepts/information for the proposed DM&E project.

US Department of the Interior - A letter dated 12/14/99 from Dennis E. Breitzman, Area Manager, to Elaine Kaiser, Chief of Section of Environmental Analysis accepting the invitation to participate as a cooperating agency in the environmental impact statement for the proposed DM&E project.

Minnesota

Transportation District Engineer - A letter dated 9/9/99 from Nelrae Succio, Engineer, responding to a letter dated June 24, 1999 from Earl Wood, Mayo Clinic, regarding MnDOT's position on the DM&E Project.

City of Mankato - A letter dated 10/19/99 and other documentation from Pat Henges, City Manager, regarding the Mankato City Council's public hearing concerning DM&E.

Administratively Confidential

City of Mankato - A letter dated 10/13/99 from Mayor Stan Christ regarding a resolution directing the DM&E to "Discontinue Representing Mankato" as having a preference for the route through the City.

City of Mankato - A letter dated 10/4/99 from Eileen M. Wells, City Attorney, regarding the impact of the proposed DM&E project on the city's flood control system.

City of Mankato - A letter dated 11/5/99 from Patrick Hentges, City Manager, forwarding the "City of Mankato Zone of Impact and Noise Vibration Study" for the DM&E project.

Blue Earth County - A letter dated 10/6/99 from Al Bennett, County Board Chairperson, to Stan Christ, Mayor of Mankato, reiterating the Board's opposition to the southern alternative.

Minnesota State University - A letter dated 10/13/99 from Michael Scullin, Professor of Anthropology, regarding destruction of the Price Archeological site by DM&E contractors.

Mankato Plumbing & Heating, Inc. - A letter from Jerome Sheehan regarding a railroad crossing at the 300 block of West Rock Street, Mankato, MN.

Board of Charlestown, Redwood County - A joint letter from Vincent Irlbeck, Chairman, Donald Steffen, Supervisor, Cory Blomgren, Supervisor, Arlen Beyer, Clerk, and Denis Schmitz, Treasurer, in support of the proposed DM&E project.

South Dakota

City of Wall - A letter dated 10/18/99 from Dave Hahn, Mayor, regarding recognition of past support for the proposed DM&E project.

Wall Chamber of Commerce - A letter dated 10/18/99 from Nola Price, Executive Director, regarding recognition of support and concern for the proposed DM&E project.

State of South Dakota - A letter dated 10/6/99 from Governor William J. Janklow requesting a response about whether or not the bypasses will be included in the EIS.

Angostura Irrigation District - A letter dated 11/6/99 from Jerry Wright, President, requesting that the Bureau of Reclamation deny construction across easement property.

City of Brookings - A letter from Mayor Virgil Heriott in support of Governor Janklow's letter of June 10, 1999 regarding potential socio-economic impacts of the proposed DM&E project on the community and its citizens.

Citizens Against The Brookings Bypass - A letter dated 7/8/99 and video from Stephine Odden with comments from the group.

Wyoming

Department of Environmental Quality - A letter dated 7/13/99 from Dan Olson, Administrator Air Quality Division, to Al Pierson, BLM Wyoming State Director, regarding concerns about the Wyoming BLM directly applying the air quality analysis and results to subsequent environmental documents for sources other than coal bed methane.

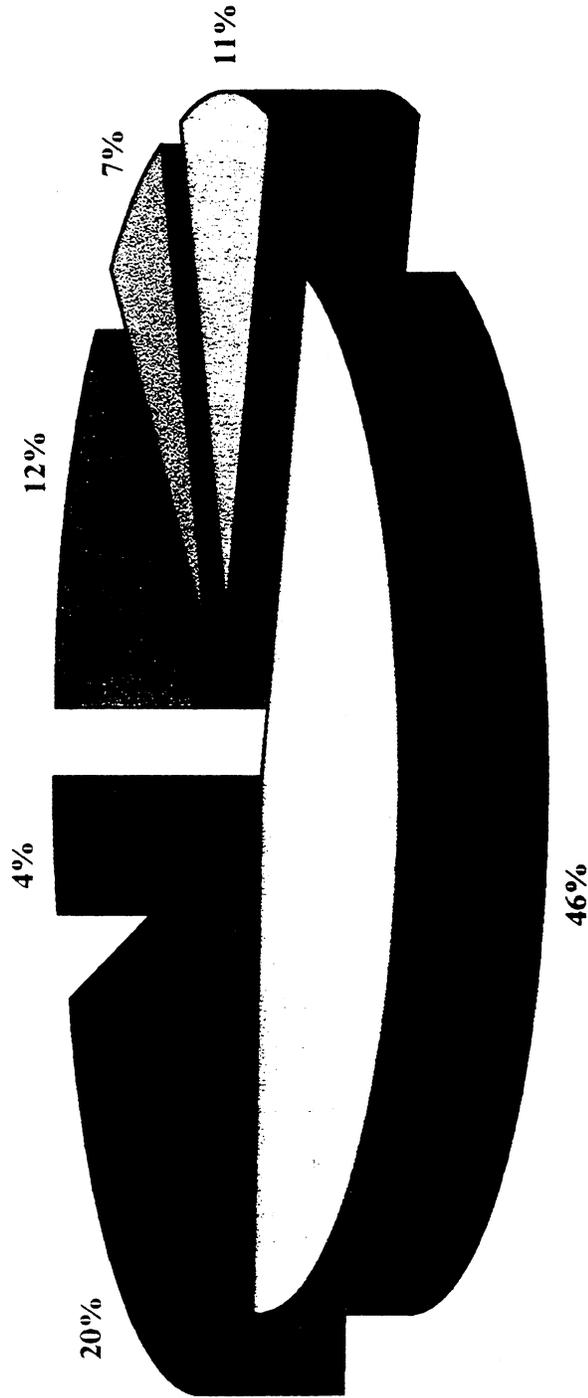
Administratively Confidential

Other

Environ - On 11/29/99 Ralph Morris forwards a letter regarding WDEQ/AQD letter of July 13, 1999 to BLM discussing use of the Air Quality Division of the Wyoming Department of Environmental Quality analysis in subsequent EAs and EISs.

Offices of Smith & Tollefson Attorneys at Law - On 12/1/99 Stephen J. Smith, forwards to The Surface Transportation Board copies of two editorials which appeared in the *Owatonna People's Press*.

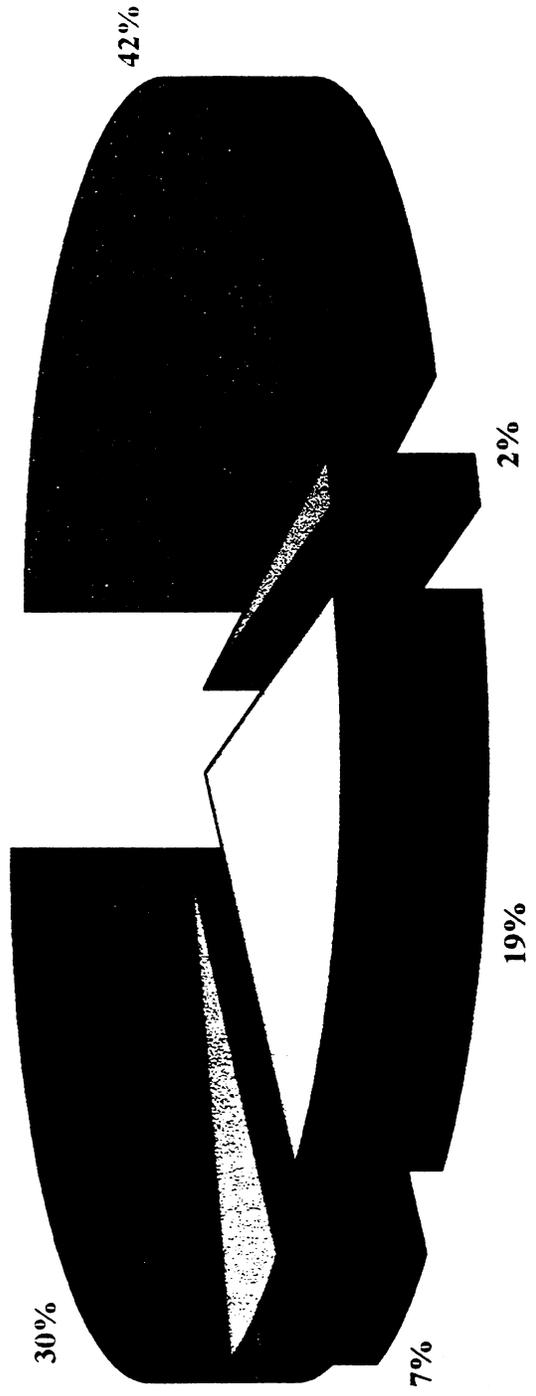
DME: COMPARISON OF ISSUES*



Air Quality
 Biological Resources
 Noise and Vibration
 Safety
 Socioeconomics
 Water Resources

* Does not include form letters, cards, and/or petitions.

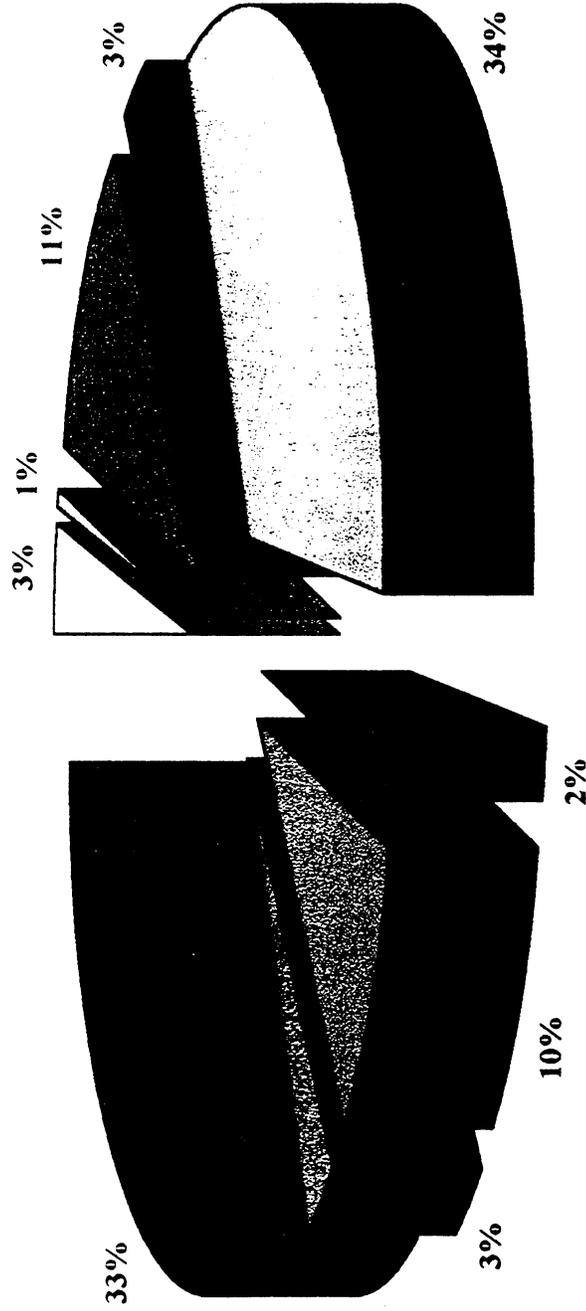
DME: AIR QUALITY*



■ Air Quality (General) ■ Mercury Contamination □ Coal Dust □ Emissions ■ Impact to Health

* Does not include form letter, cards, and/or petitions.

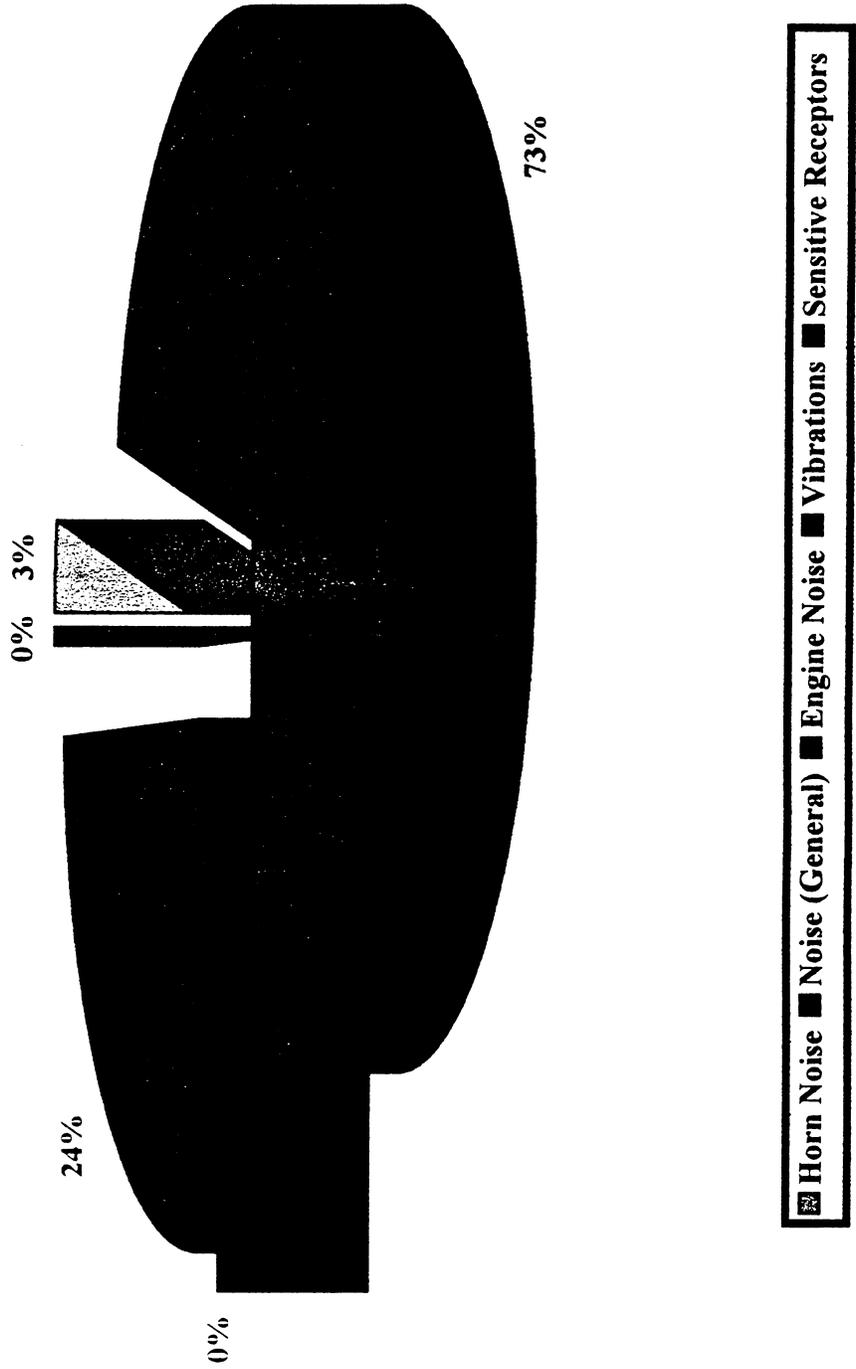
DME: BIOLOGICAL RESOURCES*



- Aesthetics/Open Spaces
- Migration Patterns
- Threatened/Endangered Species
- Big Sioux River
- Habitat Destruction
- National Parks/Refuges
- Cheyenne River Basin
- Noxious Weeds
- Impact to Wildlife

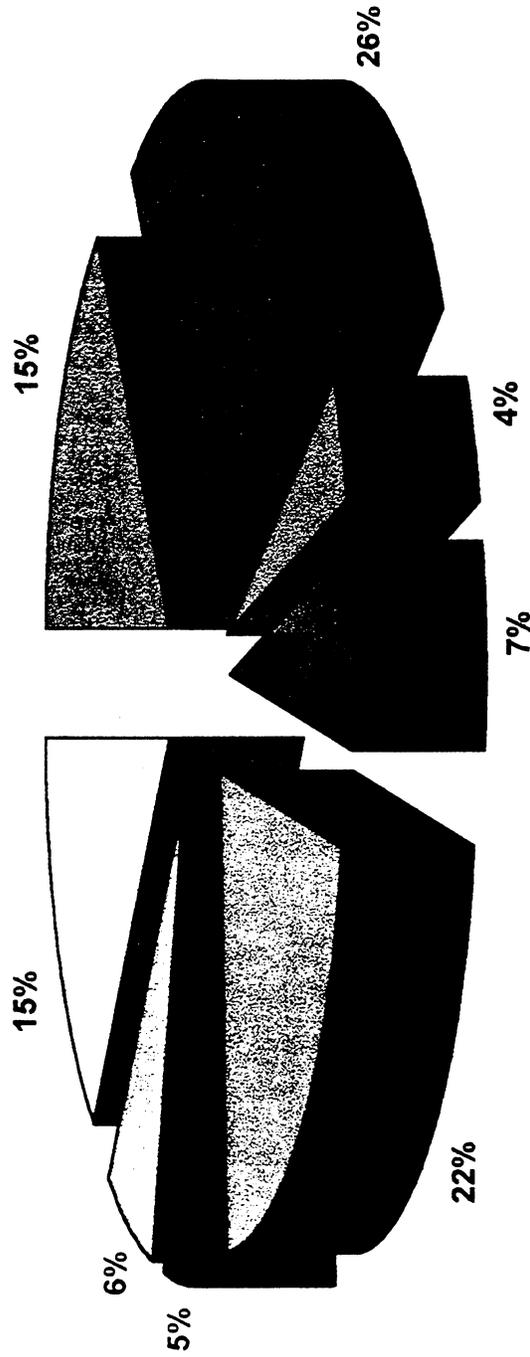
* Does not include form letters, cards, and/or petitions.

DME: NOISE and VIBRATION*



* Does not include form letters, cards, and/or petitions.

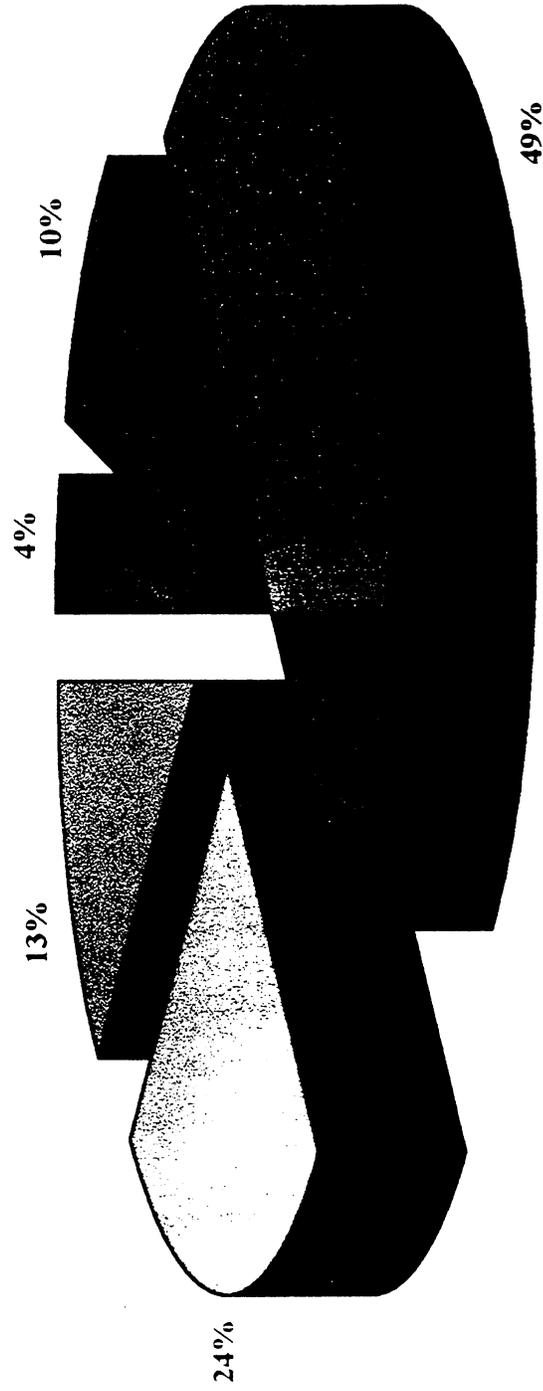
DME: SAFETY*



■ At-grade Crossing	■ Safety (General)	■ Pedestrian
■ Derailments	■ Emergency Response	■ Train Speed
□ Hazardous Materials Transport	□ Traffic Congestion/Delay	

* Does not include form letters, cards, and/or petitions.

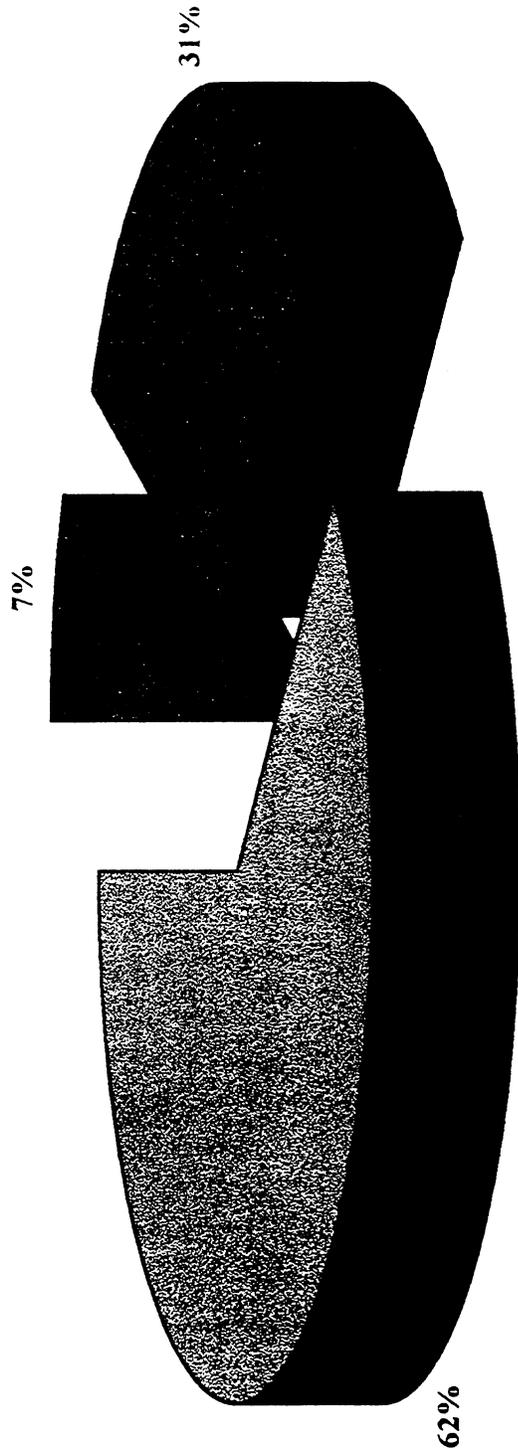
DME: SOCIOECONOMICS*



■ Socioeconomic (General) ■ Eminent Domain ■ Economic Concern ■ Impact to Farm/Ranch ■ Impact to Prime Farmland

* Does not include form letters, cards, and/or petitions.

DME: WATER RESOURCES*



■ Groundwater Contamination ■ Water Quality Issues ■ Wetlands/Water Resources

* Does not include form letters, cards, and/or petitions.



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Section of Environmental Analysis

August 1, 2000

Mr. Stephen G. Thornhill
Burns & McDonnell
P.O. Box 419173
Kansas City, MO 64063

Re: Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation --
Upgrade and Expansion -- Comment Summary #10

Dear Mr. Thornhill:

Enclosed please find a copy of all comments/documents received between December 14, 1999 and March 28, 2000 on the Dakota, Minnesota and Eastern Railroad's proposed construction and operation into the Powder River Basin. The following items are enclosed:

- 1) Document Summary #3, which highlights significant comments received between December 14, 1999 and March 13, 2000.
- 2) Letters from individuals and organizations, separated as follows: Minnesota, Rochester, South Dakota, Wyoming, and Other. (Please note that, due to a copying error, more than one letter may be clipped together.)
- 3) "Southern Minnesota Rail Safety Plan," prepared by the Minnesota Department of Transportation. (Not included in packages for Vicki Rutson or Steve Thornhill, who have already received a copy.)
- 4) "An Analysis of the Impacts on the Environment of the 777 Buffalo Ranch Resulting from the Construction of the DM&E Proposed Route, Alternative 'C'" and "Cultural Resources Evaluation of Selected Portions of the 777 Ranch Custer County, South Dakota, Appendix M," submitted by Ray J. Hillenbrand, owner of the 777 Ranch. (Not included in packages for Vicki Rutson, Steve Thornhill, Jerry Folkers, Wendy Schmitzer, and Bill Carson, who have already received a copy.)

If you have any questions or comments, please feel free to contact me at (202) 565-1545.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Victoria J. Rutson". The signature is fluid and cursive, with the first name "Victoria" and last name "Rutson" clearly legible.

Victoria J. Rutson
Project Manager

Enclosures

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**DAKOTA, MINNESOTA, AND EASTERN RAILROAD
POWDER RIVER BASIN EXPANSION PROJECT**

DOCUMENT AND COMMENT SUMMARY

REPORT NO. 3 : *DECEMBER 14, 2000 THROUGH MARCH 13, 2000*

Total Document Summary

The DM&E files and database at the PAM Project Office have grown to include approximately 3,200 documents since issuance of the Final Scope on March 10, 1999. (This number includes over 1,000 comment forms/postcards). Approximately 95% these are public comments. The remaining documents have been generated by the team, SEA, and the Applicants. Additionally, the PAM staff have begun entering approximately 2,000 comments/petitions that were received prior to release of the Final Scope. All substantive, pre-Final Scope comments will be entered

Comments Received on the Final Scope

The comments generally were received from parties that either support or oppose the proposed project and/or bypass proposals, and/or requested additional project information, and/or have identified environmental concerns. Documents submitted by DM&E, Congressional representatives, various state and local agencies are summarized below.

Dakota, Minnesota, and Eastern Railroad (DM&E)

None received during specified time frame.

Congressional, U.S.

Minnesota

Gil Gutknecht, U.S. Representative - A letter dated 2/11/00 responding to comments made by Kevin Schieffer, President of DM&E Railroad, on taxpayer funds for construction.

South Dakota

Tim Johnson, U.S. Senator - A letter dated 2/9/00, requesting that the Board consider all bypass proposals.

Tim Daschle, U.S. Senator - A letter dated 1/12/00, asking that the Board address issues raised in Pierre and Brookings, SD and consider proposed alternative routes. The Board responded on 1/31/00.

Tim Daschle, U.S. Senator - A letter dated 2/1/00 forwarding correspondence from Gary Larson, Brookings, SD, regarding noise levels as a result of the proposed DM&E project.

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Federal Agencies

US Department of the Interior - A letter dated 2/10/00 from Donald A. Simpson, Deputy State Director of Resources Policy and Management to Dan Shinn of Burns &McDonnell regarding the draft Memorandum of Agreement among the STB, various Federal agencies, numerous interested Indian tribes, and DM&E.

US Department of Agriculture-Forest Service - A letter dated 2/14/00 from Jerry Schmidt and Mary Peterson, Forest Supervisors of Medicine Bow-Routt National Forest, to Elaine Kaiser and Victoria Rutson of SEA, forwarding Identification of the Preferred Alternative.

US Department of Agriculture-Forest Service - A letter dated 2/15/00 from Wendy Schmitzer, DM&E Project Coordinator, to Victoria Rutson, SEA, forwarding comments on the draft Memorandum of Agreement regarding consultation with affected Indian tribes.

US Department of the Interior - A letter dated 12/14/99 from Dennis E. Breitzman, Area Manager, to Elaine Kaiser, SEA, accepting the invitation to participate as a cooperating agency .

State/Local Agencies

Minnesota

Mankato Coal Train Coalition - A letter dated 3/13/00 from Nancy Hamer to Elaine Kaiser, SEA, regarding the City of Mankato Public Hearing, September 20, 1999.

City of Mankato - A letter dated 2/28/00 from Anne Gray, Ward Two Representative, to Victoria Rutson of SEA regarding standard noise levels in the City of Mankato, MN.

Minnesota Department of Transportation - A letter dated 2/28/00 from Al Vogel, Director of Office Freight, Railroads & Waterways to Elaine Kaiser, SEA, forwarding a copy of the Mn/DOT's corridor safety plan for the DM&E proposed project.

Minnesota Department of Natural Resources - A letter dated 1/6/00 from Thomas W. Balcom, Supervisor of Environmental Planning and Review Section, to Elaine Kaiser, SEA, regarding interest in the DM&E project as it involves the upgrading of the railroad's existing line across southern Minnesota, plus associated proposed bypasses, yards and terminal facilities, with corresponding impacts to natural resources which are under the jurisdiction or management of the Natural Resource Department.

City of Winona - A press release dated 12/27/99 from Judith Bodway, Director of Economic Development, regarding a meeting with Jerry Miller, Mayor, and Kevin Schieffer, President of the DM&E, along with officials of the Minnesota Department of Transportation's Office of Freight, Railways, and Waterways on establishing communication concerning the DM&E operations and their impacts on the City of Winona. The Board responded on 1/18/00.

City of Mankato - A letter regarding the STB's deviation from accepted noise standards used by the Federal Housing Administration/U.S. Department of Housing and Urban Development.

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Citizens

777 Buffalo Ranch - a letter with two submittals dated 1/4/00 from Ray J. Hillenbrand, owner of the 777 Ranch, regarding an analysis of the impacts on the environment of the 777 Buffalo Ranch resulting from the construction of the DM&E's proposed Alternative C. The Board responded on 1/11/00.

Administratively Confidential

**DAKOTA, MINNESOTA, AND EASTERN RAILROAD
POWDER RIVER BASIN EXPANSION PROJECT**

DOCUMENT AND COMMENT SUMMARY

REPORT NO. 4 : MARCH 14, 2000 THROUGH MAY 19, 2000

Total Document Summary

The DM&E files and database at the PAM Project Office have grown to include approximately 3,500 documents since issuance of the Final Scope on March 10, 1999. (This number includes appropriately 1,500 comment forms/postcards). Approximately 95% these are public comments. The remaining documents have been generated by the team, SEA, and the Applicants. Additionally, the PAM staff have entered approximately one third of the estimated comments/petitions that were received prior to release of the Final Scope.

Comments Received on the Final Scope

The comments generally were received from parties commenting on DEIS chapters, Draft Programmatic Agreement, and that either support or oppose the proposed project and/or bypass proposals, and/or requested additional project information, and/or have identified environmental concerns. Documents submitted by DM&E, Congressional representatives, various state, local agencies and citizens are summarized below.

Dakota, Minnesota, and Eastern Railroad (DM&E)

None received during specified time frame.

Congressional, U.S.

Minnesota

John Dorn, State Representative - A letter dated 5/10/00 requesting DM&E railroad be held responsible for the cost of the proposed upgrade before receiving authorization from the Board.

Federal Agencies

Advisory Council on Historic Preservation - A letter dated 4/21/00 from Don Klima, Director of Office of Planning and Review, to Victoria Rutson, SEA, regarding the Draft Programmatic Agreement.

U.S. Department of Transportation - A letter dated 4/7/00 from Bruce L. McLaren, Project Manager, to Vicki Rutson, SEA, regarding the Draft Programmatic Agreement.

Administratively Confidential

U.S. Department of Transportation - A letter dated 4/7/00 from Bruce L. McLaren, Project Manager, forwarding comments after review of Chapter 1 of the Draft Environmental Impact Statement.

U.S. Department of Transportation - A letter dated 3/8/00 from Roger K. Wiebusch, Bridge Administrator, to Stephen Thornhill, Project Manager Burns & McDonnell, forwarding comments after review of the chapter 4.1 - South Dakota Existing Conditions of the Draft Environmental Impact Statement.

State/Local Agencies

City of Rochester, MN - A letter dated 3/31/00 from David Senjem, City Council Member, to Victoria Rutson, SEA, extending thanks for meeting with the Mayor and Rochester City Council Members visit to Washington and listening as they reiterated their opposition to the proposed DM&E project.

Citizens

Mankato, MN - 20 form letters and 31 individual letters from citizens of Mankato, MN opposing the proposed DM&E project.

Eagle Lake, MN - 2 letters from Mr. & Mrs. Daniel Mock and Steven Helget opposing the proposed DM&E project.

Elysian, MN - An email dated 5/10/00 from Ivan Roettger supporting the proposed DM&E upgrade through Winona and Wyoming.

Lake Crystal, MN - A letter dated 5/4/00 from Greg & Janette Abraham re-emphasizing their opposition to DM&E coal trains going through Minnesota.

St. James, MN - A letter dated 5/11/00 from Reinhold Struhs opposing the proposed DM&E project.

St. Peters, MN - A letter dated 5/10/00 from Leonard A. Hansen supporting the proposed DM&E project.

Waseca, MN - A letter dated 5/2/00 from Gene & Barbara Cleghorn opposing the proposed DM&E project.

Tribes

Lower Brule Sioux Tribe - A fax dated 5/10/00 from Scott Jones, to Victoria Rutson, SEA, forwarding comments on the Draft Programmatic Agreement.

Medicine Wheel Alliance - A letter dated 5/4/00 from John Hill, Sr., Chairman, to Victoria Rutson, SEA, regarding the Draft Programmatic Agreement.

Medicine Wheel Coalition for Sacred Sites of North America - A letter dated 4/27/00 from Francis Brown, President, to Victoria Rutson, SEA, commenting on the Draft Programmatic Agreement.

Pawnee Nation of Oklahoma - A letter dated 4/18/00 from Robert Chapman, Pawnee Nation Business Council President, to Victoria Rutson, SEA, regarding the Draft Programmatic Agreement.

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STB/SEA Correspondence Sent

Response letter dated 4/21/00 to the Honorable Peter W. Connor, Mayor of Owatonna, MN, regarding his letter dated 3/31/00 to Linda Morgan, STB, forwarding a signed Community Partnership Agreement with DM&E that addresses mitigation on the current route.

Response letter dated 4/4/00 to Leonard J. Wood, Wood Ranch, Pringle, SD, regarding his letter dated 4/14/00 requesting a prompt decision as to the location of the proposed railroad.

Draft Programmatic Agreement - dated 2/2/00.

Other

Friends of Minneopa State Park - A letter dated 4/11/00 from Bernie Lindberg, President, to SEA, opposing DM&E's plan to build a staging yard west of the present park boundary in South Bend and Judson Townships.

Holiday Inn - A letter dated 5/2/00 from Joseph A. Leonard, General Manager, to Victoria Rutson, SEA, opposing the proposed DM&E project because of the negative impacts on his business which is less than 200 feet of the railroad tracks.

Keepers "R.V." Center LTD. - A letter from Don Keepers, owner, to Victoria Rutson, SEA, opposing the proposed south bypass because of the impacts on his residence/business within 200 yards of the proposed area.

Mayo Foundation - A letter dated 4/19/00 from Keith O'Brien, Counsel, to Elaine Kaiser, SEA, forwarding a news article from the March 31, 2000 Wall Street Journal supporting previous mentioned reasons for opposing the proposed DM&E project.

Mayo Foundation - A letter dated 4/19/00 from Keith O'Brien, Counsel, to Elaine Kaiser, SEA, regarding the Minnesota Department of Transportation (MnDOT) "Southern Minnesota Rail Corridor Safety Plan."

Minnesota State University-Urban & Regional Studies Institute - A letter dated 5/5/00 from H. Roger Smith, Professor of Urban Design, opposing the proposed DM&E project.

Administratively Confidential

**DAKOTA, MINNESOTA, AND EASTERN RAILROAD
POWDER RIVER BASIN EXPANSION PROJECT**

DOCUMENT AND COMMENT SUMMARY

REPORT NO. 5 : MAY 20, 2000 THROUGH JUNE 30, 2000

Total Document Summary

The DM&E files and database at the PAM Project Office have grown to include approximately 3,550 documents since issuance of the Final Scope on March 10, 1999. (This number includes appropriately 1,500 comment forms/postcards). Approximately 95% these are public comments. The remaining documents have been generated by the team, SEA, and the Applicants. Additionally, the PAM staff have entered over two thirds of the estimated comments/petitions that were received prior to release of the Final Scope.

Comments Received on the Final Scope

The comments generally were received from parties that either support or oppose the proposed project and/or bypass proposals, and/or requested additional project information, and/or have identified environmental concerns. Documents submitted by DM&E, Congressional representatives, various state, local agencies and citizens are summarized below.

Dakota, Minnesota, and Eastern Railroad (DM&E)

None received during specified time frame.

Congressional, U.S.

Minnesota

Minnesota Congressional Delegation - A letter dated 5/26/00 regarding information generated from recent public hearings before the STB relating to railroad merger activity, specifically about safety and community impact issues that were raised as they relate to the proposed DM&E project.

Federal Agencies

U.S. Department of the Interior - A letter dated 5/24/00 from Donald Simpson, Deputy State Director, Resource Policy & Management, responding to a letter from the Surface Transportation Board dated 3/31/00 about the Draft Programmatic Agreement and Identification Plan for managing cultural resources which may be affected by the proposed DM&E Project.

Administratively Confidential

State/Local Agencies

State of Minnesota - A letter dated 5/9/00 from John C. Hottinger, State Senate, District 24, forwarding copies of letters from members of the communities directly affected by the DM&E project to Governor Jesse Ventura.

City of Mankato, MN - A letter dated 6/9/00 from Pat Hentges, City Manager, forwarding a copy of the DM&E Noise Assessment 70 dba Mitigation Threshold Supplement prepared by David Braslau Associates, Inc.

City of Mankato, MN - A letter dated 6/6/00 from Eileen M. Wells, City Attorney, regarding the effect the DM&E expansion will have on the flood control project in Mankato.

City of Mankato, MN - A fax dated 5/30/00 from Pat Hentges, City Manager, forwarding a letter from the U.S. Army Corps of Engineers regarding the Mankato Flood Control Project and the potential impacts associated with existing and future rail traffic through Mankato.

City of Rochester, MN - A letter dated 5/16/00 from Gary H. Neuman, Assistant City Administrator, concerning Keith O'Brien's April 19, 2000 letter to the STB regarding the Minnesota Department of Transportation's Southern Minnesota Rail Corridor Safety Plan as it affects the proposed DM&E project.

Citizens

Mankato, MN - 40 form letters and 11 individual letters from citizens of Mankato, MN opposing the proposed DM&E project.

Rochester, MN - A letter dated 6/2/00 from Richard D. Hurt opposing the proposed DM&E project.

Cambria, MN - A letter dated 5/26/00 from Ms. Barbara Fisher opposing the proposed DM&E project.

Oral, SD - A letter dated 5/25/00 from Paulene Staben regarding the party of record list.

Oral, SD - A letter dated 5/24/00 from Paulene Staben regarding new proposals by DM&E to cross the Angostura Irrigation District.

Oral, SD - A letter dated 5/23/00 from Paulene Staben expressing concerns about how the site visits were conducted for the Draft EIS.

Huron, SD - A letter dated 5/23/00 from Harold J. Bisch opposing the proposed DM&E project.

Oral, SD - A letter dated 5/20/00 from Paulene Staben regarding quotes in a newspaper report by Nancy Beiter, a lawyer for the STB.

Waseca, MN - A letter received 5/18/00 from Mr. & Mrs. H. M. McIntire opposing the proposed DM&E project.

Oral, SD - A letter dated 5/17/00 from Paulene Staben forwarding information for consideration in the environmental review process on the DM&E project.

Administratively Confidential

Oral, SD - A letter dated 5/16/00 from Paulene Staben forwarding questions and concerns as a result of a poll conducted by Ogala Lakota College of South Dakota landowners that DM&E showed on their maps as affected by the proposal.

Tribes

None received during specified time frame.

STB/SEA Correspondence Sent

Response letter dated 6/9/00 to Mr. Gary Neuman, City of Rochester, City Administrator, regarding his May 16, 2000 letter concerning a letter dated April 19, 2000 from Keith O'Brien, Legal Counsel for the Mayo Foundation.

Other

Mankato Coal Train Coalition - A letter dated 6/15/00 from Nancy Hamer and Dick Liebendorfer, Co-Chairs, regarding the integrity of the Mankato Flood Control Project if the STB were to approve the Mankato in-city corridor for the DM&E expansion.

Izaak Walton League of America - A letter dated 5/26/00 from Lee W. Barthel, President, Minnesota Division, opposing the proposed DM&E project.

Neptune's Favorite Ship Models - A letter dated 5/24/00 from Richard B. Reisdorf, Craftsman, opposing the proposed DM&E project.

Citizens Against the Bypass - A letter dated 5/16/00 from Kathy King, President, regarding the stipulation and agreement by and between the City of Rochester, MN and the Dakota, Minnesota, & Eastern Railroad Corporation.

Mayo Foundation - A letter dated 5/5/2000 from Keith O'Brien, Counsel, to Elaine Kaiser, SEA, forwarding a substitute letter, replacing the April 19, 2000 letter, dealing solely with the serious ramifications of the MnDOT study and deleting previous references to the terms of the City of Rochester and DM&E settlement discussion.

Mayo Foundation - A letter dated 5/5/2000 from Keith O'Brien, Counsel, to Elaine Kaiser, SEA, regarding the Minnesota Department of Transportation (MnDOT) "Southern Minnesota Rail Corridor Safety Plan."

Parties of Record

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Mr. Akito Masunga
Mitsubishi International Corporation
520 Madison Avenue
New York, NY 10022

Mr. A. Cauger
Niagara Mohawk Power Corp.
300 Erie Boulevard West
Syracuse, NY 13202

Mr. David Hirsh
Harkins & Cunningham
801 Pennsylvania Avenue, NW
Suite 600
Washington, DC 20004

Mr. Paul Cunningham
Harkins & Cunningham
801 Pennsylvania Avenue, NW
Suite 600
Washington, DC 20004

Mr. James Guinivan
Harkins & Cunningham
801 Pennsylvania Avenue, NW
Suite 600
Washington, DC 20004

Farhana Khera
Hogan & Hartson
555 13th Street, NW
Washington, DC 20004-1109

Mr. George Mayo, Jr.
Partner
Hogan & Hartson L.L.P.
555 13th Street, NW
Washington, DC 20004-1109

Mr. Eric Von Salzen
Hogan & Hartson
555 13th Street, NW
Washington, DC 20004-1109

Ms. Marta Tanenhaus
Hogan & Hartson
555 13th Street, NW
Washington, DC 20004-1109

Mr. Ted Gerarden
Donelan, Cleary, Wood, and Maser
1100 New York Avenue, NW
Washington, DC 20005-3934

Mr. Thomas Schmitz
PHB Hagler Bailly
1776 I Street, NW
Washington, DC 20006

Mr. Michael McBride
Leboeuf Lamb Greene & Macrae
1875 Connecticut Avenue, NW
Washington, DC 20009-5728

Mr. Robert Wimbish
Attorney
Rea, Cross & Auchincloss
1707 L Street, NW
Suite 570
Washington, DC 20036

Mr. Kelvin Dowd
Slover & Loftus
1224 17th Street, NW
Washington, DC 20036

Mr. William Slover
Slover & Loftus
1224 17th Street, NW
Washington, DC 20036

C. Loftus
Slover & Loftus
1224 17th Street, NW
Washington, DC 20036

Mr. Christopher Mills, Esq.
Slover & Loftus
1224 17th Street, NW
Washington, DC 20036

Mr. Peter Pfohl, Esq.
Slover & Loftus
1224 17th Street, NW
Washington, DC 20036

Mr. Andrew Kolesar, III
Slover & Loftus
1224 17th Street, NW

Mr. John Maser III
Attorney for Kennecott Energy
Donelan, Cleary, Wood, and Maser, P.C.
Washington, DC 20036
Washington, DC 20036-1601

Ms. Abby Kaplan
Coal Daily
1800 Massachusetts Avenue, NW
1920 N Street, NW Suite 500
Washington, DC 20036-1806

Mr. John Heffner
Attorney
Rea, Cross & Auchincloss
1707 L Street, NW
Suite 570
Washington, DC 20036-4201

Mr. Keith O'Brien
Attorney
Rea, Cross & Auchincloss
1707 L Street, NW
Suite 570
Washington, DC 20036-4201

Mr. Steve Kalish
Attorney
McCarthy, Sweeney & Harkaway, P.C.
2175 K Street, NW
Suite 600
Washington, DC 20037-

Dr. Benjamin Tuggle
U.S. Fish & Wildlife Service
Department of Interior
1849 C Street NW
Washington, DC 20240

Mr. Michael Dunn
Assistant Secretary
U.S. Department of Agriculture
Marketing and Regulatory Programs
Office of the Secretary
Washington, DC 20250

Mr. Paul Smith
Senior Trial Attorney
U.S. Department of Transportation
400 7th Street, SW
Room 4102 C-30
Washington, DC 20590

Mr. William Whitehurst, Jr
W W Whitehurst & Associates Inc.
12421 Happy Hollow Road
Cockeysville, MD 21030-1711

R. Young
American Electric Power Service
Corporation
P.O. Box 700
Lancaster, OH 43130-0700

David L. Hart
P.O. Box 16631
Columbus, OH 43216

Mr. David Barnard
Indianapolis Power & Light Company
P.O. Box 1595
Indianapolis, IN 46204-2936

Mr. Joseph Pandey, Jr.
Lansing Board of Water & Light
P.O. Box 13007
123 W. Ottawa Street
Lansing, MI 48901

E. Snider
Consumers Energy Company
1945 West Parnall Road
Jackson, MI 49201

Richard Bentley
P.O. Box 6000
600 Fourth
Souix City, IA 51102

Mr. Jay Logel
Muscatine Power & Water
P.O. Box 899
Muscatine, IA 52761

Mr. Duane Mayer
Consolidated Papers, Inc.
P.O. Box 8050
231 1st Avenue, North
Wisconsin Rapids, WI 54495-8050

The Honorable Michael Noble
Executive Director
Minnesotans for an Energy-Efficient
Economy (ME3)
Minnesota Building, Suite 600
46 East 4th Street
St. Paul, MN 55101

Thomas O. Cochrane
3259 Terminal Drive
#201
Eagan, MN 55121

Mr. Allan Vogel
Director
Minnesota Department of Transportation
Office of Freight, Railroads, and
Waterways
925 Kelly Annex, MS470
395 John Ireland Boulevard
St. Paul, MN 55155

Mr. Robert Kermes
Northern States Power Company
414 Nicollet Mall
RSQ10
Minneapolis, MN 55401-1927

Ms. Diane Gerth
Leonard Street and Deinard
150 South Fifth Street
Suite 2300
Minneapolis, MN 55402

Mr. Barry McGrath
Leonard Street and Deinard
150 South Fifth Street
Suite 2300
Minneapolis, MN 55402-4200

Mr. Ronald Olson
General Mills OPS Inc.
P.O. Box 15003 Commerce Station
301 4th Avenue, South
Minneapolis, MN 55415

Mr. Bob Zelenka
Executive Director
Minnesota Grain and Feed Association
400 South 4th Street
Suite 852
Minneapolis, MN 55415-1411

Mr. Edward Egan
Northern Con-Agg Inc.
3131 Fernbrook Lane
Suite 121
Plymouth, MN 55447-5321

Rick and Susy Olsen
1427 15th Avenue, NW
Rochester, MN 55901

Phillip Wise
P.O. Box 4600
Rochester, MN 55903

Mr. Donald Sudor
President
Rochester Area Chamber of Commerce
220 South Broadway
Suite 100
Rochester, MN 55904

Mardell & Glenn Schroder
973 17 1/2 Street, SE
Rochester, MN 55904

Beverly Clark
917 East Center Street
Rochester, MN 55904

Mr. Raymond Schmitz
County Attorney
Olmsted County
Government Center 3rd Floor
151 4th Street SE
Rochester, MN 55904-

Mr. Paul Wilson
District 3
Olmsted County Board of
Commissioners
Olmsted County Government Center
151 4th Street, SE
Rochester, MN 55904-3710

Mr. Phillip Wheeler
Rochester-Olmsted Council of
Governments
2122 Campus Drive, SE
Rochester, MN 55904-4744

Charles Reiter
2122 Campus Drive, SE
Rochester, MN 55904-4744

Mr. Ronald Seeger
Dunlap & Seeger, P.A.
206 South Broadway
Suite 505
Rochester, MN 55904-6502

Mr. Timothy Geisler
Mayo Foundation
200 1st Street, SW
Ozmun West 3-55
Rochester, MN 55905-0001

Mr. Daniel Blaisdell
McNeilus Steel Inc.
P.O. Box 249
Dodge Center, MN 55906

Bruce Buller
1420 City View Court, NE
Rochester, MN 55906

Harriet Winter
1210 First Street, NE
Rochester, MN 55906

Jeffrey and Jan Jacobson
1206 1st Street, NE
Rochester, MN 55906-4746

Mark & Cindy Thesing
Route 1 Box 39
Lewiston, MN 55952-9708

Chuck and Joyce Todd
315 Olmstead Street
Winona, MN 55987

David Rholl
5300 West Highway 61
Winona, MN 55987

The Honorable Jerry Miller
Mayor
City of Winona
207 Lafayette Street
Winona, MN 55987-0378

Paul & Barb Anderson
140 Valley Creek Road
Mankato, MN 56001-8617

Mr. Wes Judkins
Region 9 Development Commission
P.O. Box 3367
Mankato, MN 56002

James P. Coughlan
P.O. Box 1358
Mankato, MN 56002

Ms. Eileen Wells
City Attorney
City of Mankato
P.O. Box 3368
Mankato, MN 56002-3368

Mr. Patrick Hentges
City Manager
City of Mankato
P.O. Box 3368
10 Civic Center Plaza
Mankato, MN 56002-3368

Mr. Alan Forsberg
County Highway Engineer
Blue Earth County Courthouse
P.O. Box 8608
Mankato, MN 56002-8608

Brand Frenz
Route 2, Box 18A
North Mankato, MN 56003

Monty Tichel
508 North Main Street
Janesville, MN 56048-9229

Mr. Walter Luneburg, Jr
New Ulm Steel & Recycling, Inc.
218 19th South Street
New Ulm, MN 56073

Mr. Jeffrey Carlstrom
General Manager
New Ulm Quartzite Quarries
Route 5, Box 21
New Ulm, MN 56073

Mr. James Knetsch
Del Monte Foods
P.O. Box 407
Sleepy Eye, MN 56085

The Honorable Cletus Utz
Mayor
City of Springfield
2 East Central Street
Springfield, MN 56087

Ralph D. Gustin
1426 LeGeros Drive
Brookings, SD 57006

Mr. John Moore
Farmers Cooperative Company
P.O. Box 127
Brookings, SD 57006

COL Dwight L. Adams
2150 Derald Drive
Brookings, SD 57006

Fred Seymour
1800 Derald Drive
Brookings, SD 57006

Mulumabet Fesseha
1945 Orchard Drive
Brookings, SD 57006

Mr. Tom Hensen
Rainbow Play Systems Inc.
500 Rainbow Parkway
Brookings, SD 57006

Timothy Schwaegerl
1320 Orchard Drive
Brookings, SD 57006

Mr. Kevin Schieffer
President & CEO
Dakota, Minnesota, and Eastern Railroad
337 22nd Avenue South
P.O. Box 178
Brookings, SD 57006

Arden and Lavonne Sigl
2001 Orchard Drive
Brookings, SD 57006

Joseph C. Cech
2105 Derald Drive
Brookings, SD 57006-2725

Mr. Rodney Christianson
Chief Executive Officer
South Dakota Soybean Processors
P.O. Box 500
100 Caspian Avenue
Volga, SD 57071

Ms. Jane Fahlberg
SD Corn Growers Association
1406 West Russell
Sioux Falls, SD 57104-1328

Harlene Pesicka
SD Peace & Justice Center
P.O. Box 405
Watertown, SD 57201

Mr. Jack Nelson
Arlington Farmers Elevator Co.
P.O. Box 281
Arlington, SD 57212-0281

Mr. Ralph Nelson
Lake Preston Cooperative Association
106 2nd Avenue, NW
Lake Preston, sd 57249

The Honorable Mary Pearson
Mayor
City of Huron
P.O. Box 1369
Huron, SD 57350

Mr. Mike Trosen
Dakota Agricultural Cooperative
516 West 7th Street
Miller, SD 57362-

Mr. Carl Anderson
SD Grain & Feed Association
P.O. Box 579
423 Citizens Building
Aberdeen, SD 57402-0579

Mr. Keith Hainey
North Central Farmers Elevator
Box 366
410 Alma Avenue
Ipswich, SD 57451-0366

Mr. Robert Kienow
Mansfield Grain Exchange
P.O. Box 76
Mansfield, SD 57460

Mr. Dick Cone
Cone Ag-Services Inc.
P.O. Box 1136
Pierre, SD 57501

Mr. Randy Englund
SD Wheat Commission
P.O. Box 549
116 North Euclid
Pierre, SD 57501

Mr. Ray Trankle
SD Chamber of Commerce & Industry
P.O. Box 190
108 North Euclid
Pierre, SD 57501-0190

Mr. Ronald Wheeler
Secretary
State of South Dakota
Department of Transportation
Becker-Hansen Building
700 East Broadway Avenue
Pierre, SD 57501-2586

Mr. William Nevin
SD Department of Transportation
700 Broadway Avenue East
Pierre, SD 57501-2586

Ms. Dana Nelson
Special Assistant to the Governor
State of South Dakota
Governor's DM&E Oversight Committee
500 East Capitol
Pierre, SD 57501-3212

Roxanne Giedd
500 East Capitol Avenue
Pierre, SD 57501-5070

Ms. Lynn Harrell
Harrold Grain Company
P.O. Box 66
Harrold, SD 57536

The Honorable Jerry Nemeč
Mayor
City of Midland
P.O. Box 242
Midland, SD 57552-0242

Mr. Gerald Freudenthal
OAHE Grain Corporation
P.O. Box 244
Onida, SD 57564

Ray Smith
P.O. Box 378
Philip, SD 57567-0378

The Honorable John Hart
Mayor
City of Philip
P.O. Box 408
Philip, SD 57567-0408

Mr. Ron Mitzel
Dakota Mill & Grain
P.O. Box 2340
426 Omaha Street
Rapid City, SD 57701-1140

Sam and Bernice Clauson
9860 Sheridan Lake Road
Rapid City, SD 57702-9052

Mr. Brian Brademeyer
Secretary
Sierra Club
South Dakota Chapter
P.O. Box 1624
Rapid City, SD 57709

Ms. Wendy Clauson-Roth
President
Prairie Hills Audubon Society
of Western South Dakota, Inc.
P.O. Box 792
Rapid City, SD 57709

Mr. Peter Birrenkott
Pete Lein & Sons Inc.
P.O. Box 440
Rapid City, SD 57709-0440

Nancy Hilding
6300 West Elm
Black Hawk, SD 57718

John and Jared Rittberger
HCR 83, Box 76
Custer, SD 57730

Mr. Rick Davids
UTU SD Legislative Board (LO-046)
P.O. Box 671
Edgemont, SD 57735

Robert Rittenberger
HC 89, Box 302A
Hermosa, SD 57744

The Edoff Family
HC 89, Box 290
Hermosa, SD 57744

Michael M. Melius
HCR 89, Box 275
Hermosa, SD 57744

Jim and Beverly Varelman
HC 89, Box 284
Hermosa, SD 57744

John and Paulene Staben
HCR 56, Box 43
Oral, SD 57766

John G. Maginot
One North Arlington
1500 Shure Drive
Arlington Heights, IL 60004-1443

Mr. James Small
Commonwealth Edison Co.
1411 Opus Place
Suite 200
Downers Grove, IL 60515-5701

Mr. Thomas Litwiler
Fletcher & Sippel LLC
180 North Stetson Avenue
45th Floor, Suite 3125
Chicago, IL 60601-6721

Mr. Thomas McFarland, Jr.
McFarland & Herman
20 North Wacker Drive
Suite 1330
Chicago, IL 60606-3101

Mr. Myles Tobin
Illinois Central Railroad
455 North Cityfront Plaza Drive
Chicago, IL 60611-5504

Richard W. Eimer
500 South 27th Street
Decatur, IL 62525

Mr. Stephen Thornhill
Environmental Specialist
Burns & McDonnell
P.O. Box 419173
9400 Ward Parkway
Kansas City, MO 64141-6173

Mr. William Schenk
Regional Director
U.S. Department of the Interior
National Park Service
Midwest Region
1709 Jackson Street
Omaha, NE 68102-2571

Mr. David Lipka
Halliburton Energy Services
3000 North Sam Houston Parkway East
P.O. Box 1675
Houston, TX 77251

Ms. Betsy Monseu
Cyprus Amax Coal Sales
9100 East Mineral Circle
Englewood, CO 80112-3299

Ms. Julie Hamilton
State of Wyoming
Office of Federal Land Policy
122 West 25th Street
Herschler Building 3 West
Cheyenne, WY 82002-0600

Ms. Donna Ruffing
Niobrara County Commissioners
County Court House
P.O. Box 1238
402 South Elm
Lusk, WY 82225-1238

Ms. Mary Weber
Powder River Basin Resource Council
P.O. Box 1178
Douglas, WY 82633

Major Robert Harshbarger
President
Weston County Farm Bureau
1162 Lynch Road
Newcastle, WY 82701

Tom and Kay Wright
1329 Morrissey Road
Newcastle, WY 82701

Donley and Nancy Darnell
1331 Morrissey Road
Newcastle, WY 82701

Dennis and Luann Borgjalli
4800A State Highway 450
Newcastle, WY 82701

Mr. Jim Darlington
Range Manager
Inyan Kara Grazing Association
P.O. Box 458
Newcastle, WY 82701

Bryan Stroh
3186 Highway 450
Newcastle, WY 82701

Mr. Mike Stufflebean
Legislative Representative
United Transportation Union
Local 465
619 South Trail Circle
Apt. B
Gillette, WY 82718

Jerry & Barbara Dilts
Bridle Bit Ranch
6546 Highway 59 Teckla Route
Gillette, WY 82718-7063

Mr. Lawrence Kemper
Legislative Representative
Brotherhood of Locomotive Engineers
Division 94
5002 Raven Street
Gillette, WY 82718-7423

Denise Langley
P.O. Box 530
Wright, WY 82732-0530

Toni K. Ristau
2908 10th Street, NW
Albuquerque, NM 87107-1111

Mr. Richard Welsh
NARPO
50-505 Grand Traverse
La Quinta, CA 92253

Robert G. Dye
49 Metcalfe Court
Georgetown Ontario, CN L7G4N7

Mr. Grant Seiveright
Director, Fuels Division
Ontario Hydro
700 University Avenue
H15D13
Toronto, CN M5G 1X6

Interested Parties

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Interested Parties

Mr. Robert Elmore
SMS Ranch Partnership
44 Robin Ridge Drive
Madison, CT 06443

Mr. Merrill Perkins
Amtrak
50 Union Avenue
New Haven, CT 06519-1754

Mr. Jack Trope
Santi Angelo & Trope
100 Adams Avenue
Cranford, NJ 07016-2196

Harvey Bass
Pria Energy Group
3 Park Avenue
26th Floor
New York, NY 10016

Mr. Alan Stewart
Pira Energy Group
3 Park Avenue
26th Floor
New York, NY 10016

Richard Powell
5 Marshall Street
Albany, NY 12209

Janice Boeker
202 Louis Lane
Hockessin, DE 19709-9780

Mr. Wayne Hammon
National Association of Wheat Growers
415 2nd Street, NE
Suite 300
Washington, DC 20002-4900

Ms. Diane Duff
Executive Director
Alliance for Rail Competition
1920 N Street, NW
Suite 800
Washington, DC 20005

Connie Sadler
Sidley & Austin
1722 Eye Street, NW
Washington, DC 20006

Ms. Judith Clavelli
Public Affairs Management
1925 K Street, NW
Suite 450A
Washington, DC 20006

Mr. Emory Williams
Rea, Cross & Auchincloss
1707 L Street, NW
Suite 570
Washington, DC 20036-4201

Ms. Sharon Lauristen
Deputy Administrator, Trans &
Marketing Division
U.S. Department of Agriculture
Agricultural Marketing Service
P.O. Box 96456
Room 4006 - South Building
Washington, DC 20090-6456

Mr. Terence Martin
Team Leader, Natural Resources
Management
U.S. Department of the Interior
Office of Environmental Policy &
Compliance
1849 C Street, NW
Washington, DC 20240

Ms. Victoria Rutson
Project Manager
Surface Transportation Board
Section of Environmental Analysis
1925 K Street, NW
Washington, DC 20423-0001

Ms. Ellen Keys
Chief
Surface Transportation Board
Section of Publications/Records
(SESPR)
1925 K Street NW
Room 705
Washington, DC 20423-0001

Ms. Pearl Young
U.S. Environmental Protection Agency
Office of Federal Activities, NEPA
Compliance Division
EIS Filing Section, Mail Code 2252-A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

The Honorable Kathleen McGinty
Director
Council on Environmental Quality
722 Jackson Place, NW
Washington, DC 20503

The Honorable John McCain
Senator
U.S. Senate
SR-241 Russell Senate Office Building
Washington, DC 20510-0303

The Honorable Charles Grassley
Senator
U.S. Senate
SH-135 Hart Senate Office Building
Washington, DC 20510-1501

The Honorable Tom Harkin
Senator
U.S. Senate
SH-731 Hart Senate Office Building
Washington, DC 20510-1502

Interested Parties - cont.

The Honorable Paul Wellstone
Senator
U.S. Senate
717 Hart Senate Office Building
Washington, DC 20510-2303

The Honorable Rod Grams
Senator
U.S. Senate
SD-257 Dirksen Senate Office Building
Washington, DC 20510-2304

The Honorable Trent Lott
Senator
U.S. Senate
SR-487 Russell Senate Office Building
Washington, DC 20510-2403

The Honorable Christopher Bond
Senator
U.S. Senate
SR-274 Russell Senate Office Building
Washington, DC 20510-2503

The Honorable Thomas Daschle
Senator
U.S. Senate
Hart Senate Office Building
Washington, DC 20510-4103

The Honorable Tim Johnson
Senator
U.S. Senate
SH-502 Hart Senate Office Building
Washington, DC 20510-4104

The Honorable Phil Gramm
Senator
U.S. Senate
SR-370 Russell Senate Office Building
Washington, DC 20510-4302

The Honorable Craig Thomas
Senator
U.S. Senate
SH-109 Hart Senate Office Building
Washington, DC 20510-5003

The Honorable Michael Enzi
Senator
U.S. Senate
SR-290 Russell Senate Office Building
Washington, DC 20510-5004

The Honorable Jim Leach
Representative
U.S. House of Representatives
2186 Rayburn House Office Building
Washington, DC 20515-1501

The Honorable Leonard Boswell
Representative
U.S. House of Representatives
1029 Longworth House Office Building
Washington, DC 20515-1503

The Honorable Gil Gutknecht
Representative
U.S. House of Representatives
425 Cannon House Office Building
Washington, DC 20515-2301

The Honorable David Minge
Representative
U.S. House of Representatives
1508 Longworth House Office Building
Washington, DC 20515-2302

The Honorable Jim Ramstad
Representative
U.S. House of Representatives
103 Cannon House Office Building
Washington, DC 20515-2303

The Honorable Bruce Vento
Representative
U.S. House of Representatives
2304 Rayburn House Office
Washington, DC 20515-2304

The Honorable Martin Sabo
Representative
U.S. House of Representatives
2336 Rayburn House Office Building
Washington, DC 20515-2305

The Honorable Bill Luther
Representative
U.S. House of Representatives
117 Cannon House Office Building
Washington, DC 20515-2306

The Honorable Collin Peterson
Representative
U.S. House of Representatives
2159 Rayburn House Office Building
Washington, DC 20515-2307

The Honorable James Oberstar
Representative
U.S. House of Representatives
2366 Rayburn House Office Building
Washington, DC 20515-2308

The Honorable Pat Danner
Representative
U.S. House of Representatives
1207 Longworth House Office Building
Washington, DC 20515-2506

The Honorable Roy Blunt
Representative
U.S. House of Representatives
508 Cannon House Office Building
Washington, DC 20515-2507

Interested Parties - cont.

The Honorable Douglas Bereuter
Representative
U.S. House of Representatives
2348 Rayburn House Office Building
Washington, DC 20515-2701

The Honorable Bud Shuster
Representative
U.S. House of Representatives
2188 Rayburn House Office Building
Washington, DC 20515-3809

The Honorable John Thune
Representative
U.S. House of Representatives
506 Cannon House Office Building
Washington, DC 20515-4101

The Honorable Barbara Cubin
Representative
U.S. House of Representatives
1114 Longworth House Office Building
Washington, DC 20515-5001

Mr. Mark Yachmetz
Chief, Passenger Programs Division
MS-20
U.S. Department of Transportation
Federal Railroad Administration
400 Seventh Street, SW
Washington, DC 20590

Mr. Ronald Newman
State Director MP&E
Federal Railroad Administration
Office of Safety Assurance and
Compliance
400 7th Street, SW
RRS-14, Mail Stop 25
Washington, DC 20590

Mr. Robert Martin
Associate Administrator
Federal Railroad Administration
Office of Policy and Program
Developments
400 7th Street, SW; STOP RRP-11
Room 7087
Washington, DC 20590

Mr. Joseph Pomponio
Federal Railroad Administration
400 7th Street, SW
STOP RCC-20
Washington, DC 20590

Ms. Camille Mittleholtz
Environmental Team Leader
U.S. Department of Transportation
Office of Transportation Policy
400 7th Street, SW
Room 10309 P-130
Washington, DC 20590

Mr. George Gavalla
Associate Administrator for Safety
Federal Railroad Administration
400 7th Street, SW
STOP 25
Washington, DC 20590-0001

Robert E. Hyatt
140 Haviland Mill Road
Brookeville, MD 20833-2308

Mr. Edward McKay
Chief - Spatial Reference System
Division
U.S. Department of Commerce
National Oceanic and Atmospheric
Administration

Mr. Jack Lane
U.S. Army Corps of Engineers
Institute for Water Resources
Casey Building CEWRC-IWR-N
7701 Telegraph Road
Alexandria, VA 22315-3868

Mr. Terrel Shaw, P.E.
Reynolds, Smiths, and Hills
1545 Raymond Deal Road
Suite 210
Tallahassee, FL 32308

1315 East-West Highway, N/NGS2
Room 8813
Silver Spring, MD 20910-3282
Mr. Will Fitzgerald
Coal Outlook
800 North 4th Avenue
Knoxville, TN 37917-0672

Mr. C. Ebetino, Jr.
American Electric Power
P.O. Box 700
One Memorial Drive
Lancaster, OH 43130-0700

Mr. Daniel Elliott, III
Assistant General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, OH 44107-4207

Durocher Dock and Dredge Inc.
P.O. Box 8
Cheboygan, MI 49721

Grinnell College Libraries
1111 6th Avenue
Grinnell, IA 50112

Native Americans
Department of Cultural Affairs
New Historical Building
600 East Locust Street
Des Moines, IA 50319

Supervisor Water Resources Section
State of Iowa Department of Natural
Resources
Flood Plain Permits Branch
900 East Grand
Des Moines, IA 50319-1000

Interested Parties - cont.

Mr. Donald Etlar
Kuehl & Payer, Ltd.
1609 US Highway 18
Algona, IA 50511-1117

SIMPCO
P.O. Box 447
Sioux City, IA 51102

Mr. Talbert Davenport, Sr.
Chairman
Sac & Fox Tribal Council of the
Mississippi in Iowa
349 Meskwaki Road
Tama, IA 52339

Ms. Adrian Pushetonequa
Council Secretary
Sac & Fox Tribal Council of the
Mississippi in Iowa
349 Meskwaki Road
Tama, IA 52339

Wayne S. Billings
4474 Summit Ridge
Slinger, WI 53086-9363

Gerald A. Abood
P.O. Box 2046
231 West Michigan
Milwaukee, WI 53201

Harold H. Fuhrman & Associates
710 North Plankinton Avenue
Milwaukee, WI 53203

Mr. Robert Jacobs
Regional Forester
U.S. Forest Service
310 West Wisconsin Avenue, Room 500
Milwaukee, WI 53203

Kevin Vesperman
222 West Washington Avenue
Madison, WI 53703-

The Honorable Tommy Thompson
Governor
State of Wisconsin
Room 115 East State Capitol
P.O. Box 7863
Madison, WI 53707

State of Wisconsin
Depart. of Trans.- Bureau of
Environment
P.O. Box 7965
4802 Sheboygan Avenue, Room 451
Madison, WI 53707-7965

Mr. Jim McCarthy
Strand Associates, Incorporated
910 West Wingra Drive
Madison, WI 53715

WKOW-TV
5727 Tokay Boulevard
Madison, WI 53719

Mr. Phil McLaughlin
Adams County Planning and Zoning
P.O. Box 187
Friendship, WI 53934

Arris Sullivan
Mayo Clinic
N6568 Cty B
New Lisbon, WI 53950-

Mr. Clint Wendt
Northern Environmental
1203 Storbeck Drive
Waupin, WI 53963

Apesanahkwat
Chairman
Menominee Indian Tribe of Wisconsin
P.O. Box 910
1 Tribal Office Road
Keshena, WI 54135

College of the Menominee Nation
Library
P.O. Box 1179
Keshena, WI 54135

Ms. Linda Welsch
Secretary of Tribal Legislature
Menominee Indian Tribe of Wisconsin
P.O. Box 910
1 Tribal Office Road
Keshena, WI 54135

Mr. Doug Cox
Menominee Indian Tribe of Wisconsin
Environmental Services
P.O. Box 910
1 Tribal Office Road
Keshena, WI 54135

Erich Pitz
McMullen and Pitz Construction
Company
17 Maritime Drive
P.O. Box 8
Manitowoc, WI 54221-0008

Interested Parties - cont.

Dan and Judy Lang
812 West Janice Court
La Crosse, WI 54601

Marian E. Havlik
1603 Mississippi Street
La Crosse, WI 54601-4969

Mr. Michael Davy
Davy Engineering Company
P.O. Box 2076
La Crosse, WI 54602-2076

Mr. Jacob Lonetree
President
Ho-Chunk Nation
P.O. Box 667
405 Airport Road
Black River Falls, WI 54615

Marlene Gamroth
Legislative
Ho-Chunk Nation
P.O. Box 667
405 Airport Road
Black River Falls, WI 54615

Sol Simon
3022 Waumand Creek Road
Fort City, WI 54629

Judy Osborne
P.O. Box 128
Sparta, WI 54656

Dr. John Hildebrand
Professor of English
University of Wisconsin - Eau Claire
Department of English
105 Garfield Avenue
Eau Claire, WI 54701-4811

U.S. Bureau of Indian Affairs
Great Lakes Agency
615 West Main Street
P.O. Box 273
Ashland, WI 54806-0273

Mr. Paul Flohum
Barron County Zoning Office
Barron County Courthouse
Barron, WI 54812

Mr. Michael Kohn
IC Environmental Corporation
P.O. Box 1105
Superior, WI 54880

Mr. Tim Anderson
Isanti County Zoning
555 18th Avenue, SW
Cambridge, MN 55008

Mr. Brian Watson
Dakota County SWCD
4100 220th Street, West
#102
Farmington, MN 55024-8087

Mississippi River Hydrologist
Scot Johnson
1801 South Oak Street
Lake City, MN 55041

Tim Schlagenhaft
Area Fisheries Headquarters
1801 Oak Street, South
Lake City, MN 55041

Ms. Lynne Young
Director
Northfield Public Library
210 Washington Street
Northfield, MN 55057

Dale & Elaine Erickson
1457 Canterbury Place SE
Owatonna, MN 55060

Mr. L. Dean Christianson
District 2
Steele County Board of Commissioners
630 Florence Avenue
P.O. Box 890
Owatonna, MN 55060

Mr. Tom Shea
District 5
Steele County Board of Commissioners
630 Florence Avenue
P.O. Box 890
Owatonna, MN 55060

Rudy Stursa
3078 South County Road 45
Owatonna, MN 55060

Ms Judy Meister
Council Member at Large
City of Owatonna
540 West Hills Circle
Owatonna, MN 55060

Interested Parties - cont.

Mr. Rick Ellingson
Ward 3
City of Owatonna
City Council
540 West Hills Circle
Owatonna, MN 55060

Mr. Lester Oeltjenbruns
District 1
Steele County Board of Commissioners
630 Florence Avenue
P.O. Box 890
Owatonna, MN 55060

Mr. Les Abraham
Council Member at Large
City of Owatonna
540 West Hills Circle
Owatonna, MN 55060

Mr. Jerry Peterson
District 3
Steele County Board of Commissioners
630 Florence Avenue
P.O. Box 890
Owatonna, MN 55060

Mr. Graham Benoit
Director
Owatonna Public Library
105 North Elm Street
P.O. Box 387
Owatonna, MN 55060

Mr. & Mrs. Vernon Meixner
2076 28th Street, SE
Owatonna, MN 55060

Roger Plath
3745 Highway 14, West
Owatonna, MN 55060

Mr. Mark Hall
Ward 1
City of Owatonna
City Council
540 West Hills Circle
Owatonna, MN 55060

The Honorable Pete Connor
Mayor
City of Owatonna
540 West Hills Circle
Owatonna, MN 55060

Mr. Lee Amundson
County Highway Engineer
Steele County
Engineers Office
635 Florence Avenue
P.O. Box 890
Owatonna, MN 55060

Ms. Elizabeth Kienholz
Board President
Kids Korner Educare Center, Inc.
600 Florence Avenue
Owatonna, MN 55060

Ms. Kathleen Muellerleile
Ward 2
City of Owatonna
City Council
540 West Hills Circle
Owatonna, MN 55060

Kent Rossi
1050 Bixby Road
Owatonna, MN 55060

Joe & Eve Stransky
2752 Austin Road
Owatonna, MN 55060

Kenneth J. Henricksen
90 Ocala Place NE
Owatonna, MN 55060

Larry E. & Beverly J. Kellogg
1455 Springwood Place NE
Owatonna, MN 55060

Jerry & Darlene Czarnowski
2923 52nd Avenue, SW
Owatonna, MN 55060

Mr. Rick Wittrock
Ward 4
City of Owatonna
City Council
540 West Hills Circle
Owatonna, MN 55060

Michael & Valerie O'Neill
1243 Robin Hood Lane SE
Owatonna, MN 55060

Jon and Millie Berglund
735 Cardinal Drive
Owatonna, MN 55060

Mr. Julie Wesley-Smit
South Central MN Association Of
Realtors, Inc.
140 West Pearl Street
#2
Owatonna, MN 55060

Interested Parties - cont.

Mr. David Armstrong
Clerk Meriden
Meriden Township
7874 SW 18th Street
Owatonna, MN 55060

Mr. Daniel Buck
Executive Director
Kid's Korner Educare Center, Inc.
600 Florence Avenue
Owatonna, MN 55060

Doug and Stephanie Kolbe
1014 Almar Place
Owatonna, MN 55060

Ms. Karol Milbrath
Ward 5
Owatonna City Council
2555 Lamada Place
Owatonna, MN 55060

Norman & Laurie Spindler
4796 44th Avenue, SE
Owatonna, MN 55060

Steve's Service & Oil Warehouse
2357 44th Avenue, SE
Owatonna, MN 55060

Weldon Beese
2455 NW 82nd Avenue
Owatonna, MN 55060

Mr. Stephen Smith
Attorney at Law
Smith & Tollefson
113 West Main
P.O. Box 271
Owatonna, MN 55060-0271

Mr. Jim Wagner
District 4
Steele County Board of Commissioners
630 Florence Avenue
P.O. Box 890
Owatonna, MN 55060-0890

Tina Iserman
434 North Pine Avenue
Owatonna, MN 55060-2130

Dr. & Mrs. Kenneth & Doris Henry
423 Pebble Beach Drive
Owatonna, MN 55060-2161

Larry Brekke
1950 County Road 80
Owatonna, MN 55060-3192

Russell Gasner
1754 Mosher Avenue
Owatonna, MN 55060-3848

The Meyer Family
965 SE 22nd Street
Owatonna, MN 55060-4501

Gary Westra
1440 Nottingham Drive
Owatonna, MN 55060-4604

Michael Caron
P.O. Box 890
630 Florence Avenue
Owatonna, MN 55060-4704

Mr. Greg Sparks
City Administrator
City of Owatonna
540 West Hills Circle
Owatonna, MN 55060-4794

Rebecca Dietz
2817 28th Street, SW
Owatonna, MN 55060-5055

The Beckman Family
3102 SW 22nd Avenue
Owatonna, MN 55060-5173

Chuck & Nancy Pence
1397 SW 28th Street
Owatonna, MN 55060-5175

Gary E. Wolff
1599 SW 28th Street
Owatonna, MN 55060-5175

Interested Parties - cont.

Dan Stursa
1723 SW 28th Street
Owatonna, MN 55060-5180

Lloyd & Verna Henke
4151 Cedar Avenue, North
Owatonna, MN 55060-6176

Rita Michaelson
1250 28th Street, SE
Owatonna, MN 55060-6560

Allan L. Peterson
2392 Austin Road
Owatonna, MN 55060-6570

Ms. Marlys Koeckeritz
Township Clerk
Town of Havana
1024 44th Avenue, SE
Owatonna, MN 55060-9417

The Honorable Barb O'Neal
Mayor
City of Stillwater
5495 Oakgreen Place, North
Stillwater, MN 55082-1079

Ms. Audrey Kohnen
President
Prairie Island Sioux Community
5636 Sturgeon Lake Road
Welch, MN 55089

Lou Taylor
Tribal Secretary
Prairie Island Sioux Community
1158 Island Boulevard
Welch, MN 55089

Mr. Tom Boerner
Director
State of Minnesota
Department of Public Safety - Traffic
Safety Division
North Central Life Tower
445 Minnesota Street, Suite 1000
St. Paul, MN 55101

Susan Redalen
Briggs & Morgan
2200 First National Bank Building
St. Paul, MN 55101

Mr. Jim Franklin
Director
State of Minnesota
Department of Public Safety -
Emergency Management Division
North Central Life Tower
445 Minnesota Street, Suite 1000
St. Paul, MN 55101

Mr. Mark Ten Eyck
MCEA
26 Exchange Street, East
#206
St. Paul, MN 55101

Mr. Tim Fell
U.S. Army Corps of Engineers
St. Paul District
190 5th Street, East
St. Paul, MN 55101-1638

Ms. Martha Barnes
Executive Director
Economic Development Association of
Minnesota
26 East Exchange Street
St. Paul, MN 55101-1671

Mr. Burl Haar
Executive Secretary
State of Minnesota
Public Utilities Commission
121 7th Place East
Suite 350
St. Paul, MN 55101-2147

Ms. Phyllis Kendig
Director
St. Paul Public Library
90 West 4th Street
St. Paul, MN 55102-1668

Ms. Nina Archabal
State Historic Preservation Officer
State of Minnesota
Historical Society
345 Kellogg Boulevard, West
St. Paul, MN 55102-1906

Council on Asian-Pacific Minnesotans
525 Park Street
Suite 105
St. Paul, MN 55103

Larry Starns
1950 Summit Avenue
St. Paul, MN 55105-1460

David Zappetillo
Area Fisheries Supervisor
1200 Warner Road
St. Paul, MN 55106

Ms. Becky Balk
State of Minnesota
Department of Agriculture
90 West Plato Boulevard
St. Paul, MN 55107-2004

Interested Parties - cont.

Randy Martens
594 Stryker
Apt. #4
St. Paul, MN 55107-2894

Mr. Scott Tracy
Summit Envirosolutions
1217 Bandana Boulevard
St. Paul, MN 55108-5114

U.S. Bureau of Indian Affairs
Minneapolis Area Office
One Federal Drive
Room 550
Minneapolis, MN 55111-4007

Mr. Larry Morrin
Area Director (Acting)
U.S. Department of the Interior
Bureau of Indian Affairs
Minneapolis Area Office
1 Federal Drive #550
Fort Snelling, MN 55111-4008

Ms. Mary Manydeeds
U.S. Department of the Interior
Bureau of Indian Affairs
1 Federal Drive #550
Fort Snelling, MN 55111-4008

Jayne Molde Boeding
1608-C Eustis Street
#209
Lauder, MN 55113

Ms. Lynn Moratzka
Director
Dakota County WSC
Office of Planning/Physical/Development
Div.
14955 Galaxie Avenue
Apple Valley, MN 55124

Mr. Leonard Eilts
Chief Environmental Officer - Director
State of Minnesota
Department of Transportation - Office of
Environmental Service
3485 Hedley Avenue North
Oakdale, MN 55128

The Honorable Bob Kierlin
State Senator
Minnesota State Legislature
State Capitol
75 Constitution Avenue
St. Paul, MN 55155

The Honorable Charles Berg
State Senator
Minnesota State Legislature
State Office Building
Room G-51
St. Paul, MN 55155

The Honorable Dean Johnson
State Senator
Minnesota State Legislature
State Office Building
Room 117
St. Paul, MN 55155

Mr. Lawrence Foote
Director
State of Minnesota
Department of Transportation -
Environmental Services
395 John Ireland Boulevard
St. Paul, MN 55155

Director
State of Minnesota
Land Management Information Center
Centennial Office Boulevard
Room 330
St. Paul, MN 55155

The Honorable Jesse Ventura
Governor
State of Minnesota
130 State Capitol
St. Paul, MN 55155

Environmental Review Coordinator
State of Minnesota
Pollution Control Agency
520 Lafayette Road
4th Floor
St. Paul, MN 55155

The Honorable John Tuma
State Representative
Minnesota State Legislature
State Office Building
Room 369
St. Paul, MN 55155

The Honorable Jerry Dempsey
State Representative
Minnesota State Legislature
State Office Building
Room 549
St. Paul, MN 55155

The Honorable Pat Piper
State Senator
Minnesota State Legislature
Capitol Building
Room G-9
St. Paul, MN 55155

The Honorable Bob Gunther
State Representative
Minnesota State Legislature
State Office Building
Room 379
St. Paul, MN 55155

The Honorable Gary Kubly
State Representative
Minnesota State Legislature
State Office Building
Room 315
St. Paul, MN 55155

The Honorable Mike Osskopp
State Representative
Minnesota State Legislature
State Office Building
Room 449
St. Paul, MN 55155

Interested Parties - cont.

The Honorable Marty Seifert
State Representative
Minnesota State Legislature
State Office Building
Room 593
St. Paul, MN 55155

The Honorable Lynda Boudreau
State Representative
Minnesota State Legislature
State Office Building
Room 473
St. Paul, MN 55155

The Honorable Fran Bradley
State Representative
Minnesota State Legislature
559 State Office Building
St. Paul, MN 55155

Director
State of Minnesota
Office of State Demographer - MN
Planning
658 Cedar Street
St. Paul, MN 55155

The Honorable Steven Sviggum
State Representative
Minnesota State Legislature
463 State Office Building
St. Paul, MN 55155

The Honorable Howard Swenson
State Representative
Minnesota State Legislature
39 State Office Building
St. Paul, MN 55155

The Honorable Elaine Harder
State Representative
Minnesota State Legislature
487 State Office Building
St. Paul, MN 55155

Chicano Latino Affairs Council
50 Sherburne Avenue
St. Paul, MN 55155

Mr. Michael Sullivan
Executive Director
State of Minnesota
Environmental Quality Board - Strategic
& Long Range Planning
658 Cedar Street
Suite 300
St. Paul, MN 55155

The Honorable Julie Storm
State Representative
Minnesota State Legislature
527 State Office Building
St. Paul, MN 55155

The Honorable William Kuisle
State Representative
Minnesota State Legislature
565 State Office Building
St. Paul, MN 55155

The Honorable Doug Reuter
State Representative
Minnesota State Legislature
507 State Office Building
St. Paul, MN 55155

Mr. Dan Krom
State of Minnesota
Department of Transportation MS 140
395 John Ireland Boulevard
St. Paul, MN 55155

The Honorable James Clark
State Representative
Minnesota State Legislature
583 State Office Building
St. Paul, MN 55155

The Honorable Steve Murphy
State Senator
Minnesota State Legislature
Capitol Building
Room 301
St. Paul, MN 55155

The Honorable Richard Mulder
State Representative
Minnesota State Legislature
515 State Office Building
St. Paul, MN 55155

The Honorable Gregory Davids
State Representative
Minnesota State Legislature
367 State Office Building
St. Paul, MN 55155

The Honorable Henry Kalis
State Representative
Minnesota State Legislature
317 State Office Building
St. Paul, MN 55155

The Honorable Sheila Kiscaden
State Senator
Minnesota State Legislature
135 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1206

The Honorable Dick Day
State Senator
Minnesota State Legislature
147 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1206

The Honorable Arlene Lesweski
State Senator
Minnesota State Legislature
131 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1206

Interested Parties - cont.

The Honorable Kenric Scheevel
State Senator
Minnesota State Legislature
129 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1206

The Honorable Dennis Frederickson
State Senator
Minnesota State Legislature
139 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1206

The Honorable Gene Pelowski, Jr.
State Representative
Minnesota State Legislature
295 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1298

The Honorable Jim Vickerman
State Senator
Minnesota State Legislature
State Capitol
75 Constitution Avenue
St. Paul, MN 55155-1606

Mr. Bob Swanson
Section Director
State of Minnesota
Department of Transportation - Railroad
Administration
925 Kelly Annex, MS470
395 John Ireland Boulevard
St. Paul, MN 55155-1899

Mr. Thomas Balcom
Minnesota Department of Natural
Resources
Office of Management & Budget
Services
500 Lafayette Road
Box 10
St. Paul, MN 55155-4001

Mr. Ray Hitchcock
Assistant Commissioner
State of Minnesota
DNR - Operations
500 Lafayette Road
St. Paul, MN 55155-4001

Mr. Roger Holmes
Director
State of Minnesota
DNR - Division of Fish and Wildlife
500 Lafayette Road
St. Paul, MN 55155-4031

Mr. Art Dunn
Director
State of Minnesota
Environmental Assistance Office
520 Lafayette Road
2nd Floor
St. Paul, MN 55155-4100

Mr. Kevin Kain
Project Manager
Minnesota Pollution Control Agency
Environmental Planning and Review
Office
520 Lafayette Road, North
St. Paul, MN 55155-4194

Mr. Kent Lokkesmoe
Director
State of Minnesota
DNR - Division of Waters
500 Lafayette Road
St. Paul, MN 55155-4194

The Honorable John Hottinger
State Senator
Minnesota State Legislature
120 Capitol
75 Constitution Avenue
St. Paul, MN 55155-6153

Director
State of Minnesota
Department of Health - Environmental

Policy, Planning and Analysis Unit
P.O. Box 64975
Minneapolis, MN 55164-0975

The Honorable Rod Grams
Senator
U.S. Senate
Health Division
Anoka, MN 55303

Mr. Marshal Braman
Schoell & Madsen
10580 Wayzata Boulevard
2013 2nd Avenue, NE Suite 1
Minnetonka, MN 55305

David Strei
112503 Washington Lane
chaska, MN 55318-

Svoboda Ecological Resources
2477 Shadywood Road
Excelsior, MN 55331

Mr. Paul Josephson
Wenck Associates
1800 Pioneer Creek Center
P.O. Box 249
Maple Plain, MN 55359-0249

Tom Casey
2854 Cambridge Lane
Mound, MN 55364-8585

Mr. Stanley Crooks, Sr.
Chairman
Shakopee Mdewakanton Sioux
Community
2330 Sioux Trail, NW
Prior Lake, MN 55372

Lori Crowschild
Tribal Secretary
Shakopee Mdewakanton Sioux
Community
2330 Sioux Trail, NW
Prior Lake, MN 55372

Interested Parties - cont.

Mr. Andrew MacArthur
Attorney at Law
Couri & MacArthur
705 Central Avenue East
P.O. Box 369
St. Michael, MN 55376-0369

Ms. Mary Lawson
Director
Minneapolis Public Library
300 Nicollet Mall
Minneapolis, MN 55401-1992

Randy Duncan
Natural Resource Group, Incorporated
1800 International Centre
900 2nd Avenue, South
Minneapolis, MN 55402-3314

Mr. & Mrs. John Swanson
3400 Edmund Boulevard
Minneapolis, MN 55406

Linda C. Winholtz
712 3rd Avenue, SE
Minneapolis, MN 55414

Wendy Owen
309 6th Street SE
Apt. #314
Minneapolis, MN 55414-

Mr. David Braslau
Consultant
David Braslav & Associates
1313 5th Street SE
Minneapolis, MN 55414-4504

Jeffrey Turner
HDR Engineering
6190 Golden Hills Drive
Minneapolis, MN 55416

Mr. Mark Wollschlager
Wetland Specialist
HDR Engineering
6190 Golden Hills Drive
Minneapolis, MN 55416

Ms. Sarah Emery
HDR Engineering
6190 Golden Hills Drive
Minneapolis, MN 55416-1518

Minnesota Cultural Diversity Center
First Bank Building
9633 Lyndale Avenue South
Bloomington, MN 55420

John W. Gorman, Incorporated
P.O. Box 202141
Bloomington, MN 55420-7141

Mr. Eugene Rowen, P.E.
Senior Transportation Engineer
Ulteig Engineers, Inc.
5201 East River Road
Suite 308
Minneapolis, MN 55421

Mr. Timothy Mulcahy
Canadian Pacific Railway
501 Marquette Avenue South
Suite 1700 Soo Line Building
Minneapolis, MN 55440

Bo DeRemee and Linda O'Neill
1680 Echo Trail
Ely, MN 55731

Ms. Ann Jenkins
Duluth Public Library
520 West Superior Street
Duluth, MN 55802

Dan Kelly
412 2nd Avenue, NW
Rochester, MN 55901

Georgia Fogarty
200 1st Avenue NW
#1106
Rochester, MN 55901

Dawn Beach
1961 42nd Street NW
Rochester, MN 55901

Margaret M. Osborne
516 5th Avenue NW
Rochester, MN 55901

Stan Drips
2100 Valkyrie Drive, NW
#308
Rochester, MN 55901

Interested Parties - cont.

David and Jodi Edmonson
807 1st Street NW
Rochester, MN 55901

Bertha H. Johnson
200 1st Avenue NW
#903
Rochester, MN 55901

Earl H. Wood, M.D., Ph.D.
211 2nd Street, NW
Rochester, MN 55901

Lloyd and Patricia Ketterling
4115 7th Place, NW
Rochester, MN 55901

J. T. Harris
1516 NW 45th Street
Rochester, MN 55901

Dawn Schuett
18 1st Avenue, SE
Rochester, MN 55901

Katherine Peterson
831 33rd Street, NW
Rochester, MN 55901

Vicki Johnson
509 4th Avenue NW
Rochester, MN 55901

Nancy MacKenzie
Rochester League of Women Voters
1841 NW Terracewood Drive
Rochester, MN 55901

Scott Fritton
4320 7th Street, NW
Rochester, MN 55901

Jerry D. Reynolds
2017 Telemark Lane, NW
Rochester, MN 55901

Mary Gorfine
2315 10th Avenue, NW
Rochester, MN 55901

G. N. Kolb
2528 24 Avenue, NW
Rochester, MN 55901

Dave Ferber
781 41st Avenue, NW
Rochester, MN 55901

Richard Otto
5717 Shetland Drive
Rochester, MN 55901

Mr. Richard Edwards
Administrator
Charter House
211 2nd Street, NW
Rochester, MN 55901

Mr. Al Berning
CEO
Precision Electromechanical
Manufacturing
2535 Highway 14 West
Rochester, MN 55901

Howard M. Winholtz
1928 26th Avenue, NW
Rochester, MN 55901

Dean C. Larson
624 27th Street, NW
Rochester, MN 55901

David W. Parker
4460 London Lane, NW
Rochester, MN 55901

Richard & Laurie Briggs
3534 8th Street, NW
Rochester, MN 55901

Interested Parties - cont.

Bill & Ruth Bauer
434 41st Avenue, NW
Rochester, MN 55901

Patricia Fix
23 Viking Village
Rochester, MN 55901

Susan Robinson
4556 3rd Street
Rochester, MN 55901

Sylvie Nickel
125 11th Avenue, NW
Rochester, MN 55901

Ron & Sharon Elcombe
1002 Chalet Drive, NW
Rochester, MN 55901

Amy Caucutt
Legislative Analyst
Olmsted County
716 28th Street, NW
Rochester, MN 55901

LaVerne Gaffron
1516 16 1/2 Avenue, NW
Rochester, MN 55901

Kent Milligan
4212 York Lane, NW
Rochester, MN 55901

Mark L. Moadel & Dr. Soheyla Saadi
1007 20th Street, NW
Rochester, MN 55901

Fran Bradley
4316 Manor View Drive, NW
Rochester, MN 55901

David P. Martin
5274 Carrington Lane, NW
Rochester, MN 55901

Mr. & Mrs. Gene Sokol
804 28th Street, NW
Rochester, MN 55901

Frank E. Dapron
2740 Spyglass Court, NW
Rochester, MN 55901

A. Bennett and Helen Reeves
2403 5th Avenue NW
Rochester, MN 55901

Linda Malec
3111 NW 11-1/2 Avenue
Rochester, MN 55901

Mary Hayek
1112 2nd Street, NW
Rochester, MN 55901

Bob Werner
3049 15th Avenue, NW
Rochester, MN 55901

Ms. Dorothy Lindvig
Owner
Rental Depot, Inc. & Party Station
1802 7th Street NW
Rochester, MN 55901

Merlyn & Margaret Jeché
414 43rd Avenue, NW
Rochester, MN 55901

Patrick & Jeanne Draper
852 48th Street, NW
Rochester, MN 55901

Robert and Jane Toddie
1431 1st Street, NW
Rochester, MN 55901

Interested Parties - cont.

Mr. Mike Podulke
District 1
Olmsted County Board of
Commissioners
One 11th Avenue, NW
Rochester, MN 55901

The Johnson Family
2631 Tuxedo Lane, NW
Rochester, MN 55901

Craig and Joyce Peterson
508 5th Avenue, NW
Rochester, MN 55901

Mr. Thomas Bergsland
Chairman
Elektro Assemblies, Inc.
522 6th Avenue, NW
Rochester, MN 55901

Frieda Salassa
211 2nd Street, NW
Apartment 1916
Rochester, MN 55901-

Mrs. Vicki Groenenboom
SE Regional Director
American Cancer Society
882 7th Street, NW
Rochester, MN 55901-

Jan Hoag
2709 Spyglass Court NW
Rochester, MN 55901-

Delaine and Carol Holden
5908 Chateau Road NW
Rochester, MN 55901-0138

Frank Nichols
1408 16th Avenue NW
Rochester, MN 55901-0254

Ms. Kathleen Schwartz
Executive Officer
Southeast Minnesota Association of
Realtors

Annie M. Riley
1239 2nd Street, NW
Rochester, MN 55901-0360

Olmsted County SWCD
1485 Industrial Drive, NW
Room 102

1111 14th Street, NW
Rochester, MN 55901-0268

Rochester, MN 55901-0750

Michael & Lynne Brutman
2121 15th Avenue NW
Rochester, MN 55901-1570

The Bofferding Family
2041 13th Avenue, NW
Rochester, MN 55901-1580

J. M. Dahm
902 11th Avenue, NW
Apartment #719
Rochester, MN 55901-1766

The Hughes Family
1833 35th Street, NW
Rochester, MN 55901-1908

Marita Heller
1317 Kings Run Drive, NW
Rochester, MN 55901-2090

John & Marge Pratten
1333 Arthur Lane, NW
Apartment #207
Rochester, MN 55901-2092

Mary Schmitt
2306 10th Avenue, NW
Rochester, MN 55901-2402

David and Shirley Swenson
1213 8th Avenue, NW
Rochester, MN 55901-2529

Doug and Dianne Seavey
504 7th Street NW
Rochester, MN 55901-2645

Interested Parties - cont.

Marshal & Mary Beyer
834 5th Street, NW
Rochester, MN 55901-2701

Joseph and Elaine Mayer
215 8th Avenue NW
Rochester, MN 55901-2714

Edward and Sharon Randall
719-1/2 3rd Street, NW
Rochester, MN 55901-2745

Irma S. Elvir
1116 2nd Street, NW
Rochester, MN 55901-2758

Michael Thelen and Angela Dispenzieri
5213 Cameron Drive, NW
Rochester, MN 55901-2917

Dr.
Louis Bushard, M.D.
5163 Nicklaus Drive NW
Rochester, MN 55901-3795

Mrs. Brenda Stowe
3149 Wembley Lane, NW
Rochester, MN 55901-4171

Michael C. Quirk
847 1st Street, NW
Rochester, MN 55901-6266

Robert and Angela Vierkant
836 Emerald Lane, NW
Rochester, MN 55901-6513

Matthew Feirer
226 7th Street, NW
Rochester, MN 55901-6815

The Okrzynski Family
3514 9th Avenue, NW
Rochester, MN 55901-6936

Wanda Mettes
1019 41 Street, NW #222
Rochester, MN 55901-7400

Joseph Nix
3049 15th Avenue, NW
Rochester, MN 55901-7744

Robert & Stacy Freimuth
1333 Cascade Street, NW
Rochester, MN 55901-7778

William McNeil
2509 5th Avenue, NW
Rochester, MN 55901-7816

Lyle and Marion Bateman
5211 60th Avenue, SW
Rochester, MN 55901-7901

John & Sally Vandermus
2261 Fisher Court NW
Rochester, MN 55901-8083

Ms. Carol Kamper
District 2
Olmsted County Board of
Commissioners
2204 Valkyrie Drive NW
Rochester, MN 55901-8127

Richard E. Badger
6004 NW Valley High Road
Rochester, MN 55901-8511

C.D. Applegath
1943 67th Street NW
Rochester, MN 55901-8823

Arlin & Sharon Haack
7358 W. River Road, NW
Rochester, MN 55901-8865

Interested Parties - cont.

Paul & Maureen Kuehn
4015 60th Avenue, SW
Rochester, MN 55902

Jane Belau
916 4th Street, SW
Rochester, MN 55902

The Huston Family
713 19th Avenue, SW
Rochester, MN 55902

Mr. Peter Ouillette
Laboratory Technologist
Mayo Clinic
506 1st Street, SW
Medical Science Bldg. 2-125
Rochester, MN 55902

Legal Assistance of Olmsted County
1812 2nd Street SW
Rochester, MN 55902

Eric L. Matteson, MD
1752 Walden Lane, SW
Rochester, MN 55902

LeRoy Mercier
5309 80th Street, SW
Rochester, MN 55902

The Bisig Family
1013 21st Avenue
Rochester, MN 55902

Linda A. Narotzky
2804 2nd Street, SW
Rochester, MN 55902

The Schreiter Family
2828 SW Paradise Court
Rochester, MN 55902

John Atkinson
1409 Weatherhill Court, SW
Rochester, MN 55902

Jay and Nicole Hansen
2220 Lenwood Drive, SW
Rochester, MN 55902

Gene Peters
3015 18th Avenue, SW
Rochester, MN 55902

John and Martha Roemer
705 Memorial Parkway SW
Rochester, MN 55902

Tibor and Dorothy Szabo
1153 West Center Street
Rochester, MN 55902

Richard & Jane Rodeheffer
604 9th Avenue, SW
Rochester, MN 55902

Barbara Bartleson
2303 Crest Lane, SW
Rochester, MN 55902

Kenneth Bale
5542 60th Avenue, SW
Rochester, MN 55902

Mr. Keith Churchill, D.D.S.
Stone Barn Dentistry
615 16th Street, SW
Rochester, MN 55902

Charles Darby
2011 Kal Lane SW
Rochester, MN 55902

Mr. Paul Bourgeois
Independent School District #535
615 7th Street, SW
Rochester, MN 55902

Interested Parties - cont.

Walter Benscoter
2050 Lenwood Drive, SW
Rochester, MN 55902

John Donovan
3701 60th Avenue, SW
Rochester, MN 55902

Ms. Earlene Wickre
Coordinator of Bus Services
Rochester Public Schools
Edison Building
615 SW 7th Street
Rochester, MN 55902

Randall, Patricia, Sophia, & Kip Walker
923 10th Street, SW
Rochester, MN 55902

Robert P. Dinapoli, MD
910 9th Avenue, SW
Rochester, MN 55902

John R. Mills
2857 Stonegata Ct. SW
Rochester, MN 55902

John G. Mayne
600 4th Street, SW
Apartment #102
Rochester, MN 55902

Dr. and Mrs. Michael Silber
2006 Kal Lane, SW
Rochester, MN 55902

Stephen C. Textor, M. D.
3317 Fox Hollow Lane
Rochester, MN 55902

Jeffrey H. Hanson
403 Meadow Run Drive, SW
Rochester, MN 55902

Paul & Evelyn Tradup
1527 3rd Avenue SW
Rochester, MN 55902

Amundsen Family
2901 Bambi Court, SW
Rochester, MN 55902

Edward P. Didier, MD
2314 Hillside Lane, SW
Rochester, MN 55902

Edward V. Loftus, Jr.
905 23rd Avenue, SW
Rochester, MN 55902

Patricia Griffin
2606 Valley High Drive
Rochester, MN 55902

Sylvester & Yvonne Sterioff
1151 Taro Lane, SW
Rochester, MN 55902

Kathy Nolan
953 14th Avenue, SW
Rochester, MN 55902

Richard F. Brubaker, M.D.
601 Memorial Parkway, SW
Rochester, MN 55902

Keith D. Lindor
2217 Balsam Court, SW
Rochester, MN 55902

Carol Carryer
615 7th Street, SW
Rochester, MN 55902

Gary L. Mullen-Schultz
641 44th Avenue Court, SW
Rochester, MN 55902

Interested Parties - cont.

Donald Sudor
612 15th Avenue, SW
Rochester, MN 55902

Donald W. Klass
956 14th Avenue, SW
Rochester, MN 55902

Dr. & Mrs. Jack Beabout
1406 30th Street, SW
Rochester, MN 55902

Superintendent Noennig
Rochester Public Schools
Independent School District 535
Edison Building
615 SW 7th Street
Rochester, MN 55902

Olivia H. Blackburn
1010 6th Street, SW
Rochester, MN 55902

H. Gordon Schwacke
28 Conner Circle, SW
Rochester, MN 55902-0800

Thomas C. Spelsberg
1828 Walden Lane, SW
Rochester, MN 55902-0903

Mark Costopoulos, M.D.
1310 Folwell Drive, SW
Rochester, MN 55902-0960

Mr. Dick Larson
Aide to Representative Gutknecht
U.S. House of Representatives
Midway Office Plaza
1530 Greenview Drive, SW #108
Rochester, MN 55902-1080

Ms. Gael Entrikin
Coordinator
Southeast Minnesota Coal Train
Coalition
1508 28th Street, SW
Rochester, MN 55902-1129

Residents
2606 Crest Lane, SW
Rochester, MN 55902-1145

Patricia A. Mann
210 Linden Court, SW
Rochester, MN 55902-1211

Jonathan & Pamela Allan
709 37th Street, SW
Rochester, MN 55902-1283

Gwen C. Ladner
240 Salem Point Dr SW
Rochester, MN 55902-1314

Kent A. Sandgen
5428 31st Avenue, SW
Rochester, MN 55902-1710

Mr. David Klocke
St. Mary's Hospital
Emergency Department
1216 2nd Street SW
Rochester, MN 55902-1906

E. W. Johnson, Jr., M.D.
1001 Plummer Circle, SW
Rochester, MN 55902-2082

Stephen Carmichael
1435 20th Street, SW
Rochester, MN 55902-2217

Bernard & Betty Markham
224 19th Street NW
Rochester, MN 55902-2327

Jim Vanderheider
2228 Haralson Lane, SW
Rochester, MN 55902-2355

James and Susan Bartels
5008 60th Street, SW
Rochester, MN 55902-2428

Interested Parties - cont.

Terry and Kathy King
6027 60th Avenue, SW
Rochester, MN 55902-2432

Ms. Kathy King
President
Citizens Against the Rochester Bypass
6027 60th Avenue, SW
Rochester, MN 55902-2432

Monica Frytak
6106 70th Street SW
Rochester, MN 55902-2436

Ernie Moeller
910 Scenario Lane, SW
Rochester, MN 55902-2513

Steve & Kris Hammel
704 Scenario Lane SW
Rochester, MN 55902-2522

Roger M. Leachman
822 4th SW
Rochester, MN 55902-2914

Douglas and Jean McGill
303 6th Avenue, SW
Rochester, MN 55902-2972

Regina Marie Sherwood Faresin
728 1st Avenue, SW
#102
Rochester, MN 55902-3307

Mr. John Harwick
News Director
KOLM-AM and KWWK Radio
1220 4th Avenue, SW
Rochester, MN 55902-3834

Pauline Utzinger
1900 Lakeview Court, SW
Apartment 101
Rochester, MN 55902-4203

Stephen B. Erickson, M.D.
1371 Woodland Drive SW
Rochester, MN 55902-4226

Malcolm K. Campbell, MD
723 SW 10th Street
Rochester, MN 55902-6303

John W. Worthington, M.D.
836 8th Avenue SW
Rochester, MN 55902-6308

Mr. & Mrs. James
1153 Westhill Drive, SW
Rochester, MN 55902-6604

Olmsted County Historical Society
1195 County Road 22 SW
Rochester, MN 55902-6619

Ms. Judy Mohlke
President
Rochester Exchange Club
P.O. Box 972
Rochester, MN 55903

Mary Reider
Mary Reider for Congress
PO Box 9250
Rochester, MN 55903

Ms. Brenda Dicken
Secretary
Township Cooperative Planning
Association
P.O. Box 339
Rochester, MN 55903

Mr. William Boyne
Publisher
Post-Bulletin Company, L.L.C.
18 1st Avenue, SE
P.O. Box 6118
Rochester, MN 55903

Marilyn Lovik
P.O. Box 849
Rochester, MN 55903

Pat Deutsch
PACE Electronics, Inc.
533 6th Avenue, NW
P.O. Box 6937
Rochester, MN 55903

Interested Parties - cont.

Mr. Jon Losness
Editor
Post-Bulletin Company, LLC
18 1st Avenue SE
Rochester, MN 55903-3722

Mr. Michael Quirk
President
Kutzky Park Neighborhood Association
P.O. Box 6101
Rochester, MN 55903-6101

Tony Hames
P.O. Box 6177
Rochester, MN 55903-6177

Nelrae Succio
Transportation District Engineer
Minnesota Department of Transportation
2900 48th Street, NW
P.O. Box 6177
Rochester, MN 55903-6177

Mr. Thomas Ferris
President
Rochester Cheese
4219 Highway 14 West
P.O. Box 6997
Rochester, MN 55903-6997

Dale Pedersen
2303 Schmidt Court, SE
Rochester, MN 55904

Dennis & Linda Sybrant
1309 East Center
Rochester, MN 55904

Rochester Neighborhood Office
City Hall
201 4th Street SE
Rochester, MN 55904

Scott Williams
916-1/2 1st Street SE
Rochester, MN 55904

University of Minnesota Rochester
Campus
Library
855 30th Avenue SE
Rochester, MN 55904

Don German
122 7th Avenue, SE
Rochester, MN 55904

Matt and Ann Husgen
6815 Summerset Court, SE
Rochester, MN 55904

The Greymont Family
5431 Shannon Valley Lane, SE
Rochester, MN 55904

Dennis and Bridget O'Neill
6501 50th Street, SE
Rochester, MN 55904

Olmsted County Community Services
Government Center
151 4th Street, SE
Rochester, MN 55904

Matthew Olson
1221 East Center Street
Rochester, MN 55904

Robert & Ina Kelly
1816 County Road 16 SE
Rochester, MN 55904

Michael Sheehan
4729 County Road 16 SE
Rochester, MN 55904

Mr. Richard Devlin
Administrator
Olmsted County
City Hall
201 4th Street, SE
Rochester, MN 55904

Lyle Felsch
201 4th Street, SE
Room 10
Rochester, MN 55904

Rochester Community and Technical
College
Library
851 30th Avenue SE
Rochester, MN 55904

Interested Parties - cont.

Winona State University Rochester
Campus
Library
859 30th Avenue SE
Rochester, MN 55904

Jeffrey Toenges
2110 Center Street, East
Rochester, MN 55904

Lois Toogood
1107 East Center Street
Rochester, MN 55904

Darrell & Barbara J. Ottman
914 51st Avenue SE
Rochester, MN 55904

Mr. Jerry Dooley
Neighborhood Coordinator
East Side Pioneers Neighborhood
Association
City Hall, Room 209
201 4th Street SE
Rochester, MN 55904

Dale E. Heltzer
1354 8-1/2 Avenue SE
Rochester, MN 55904

Doug Lochner
3924 Simpson Road, SE
Rochester, MN 55904

Justice & Social System Volunteer
Program
Olmsted County Government Center
151 4th Street SE
Rochester, MN 55904

Mr. Daryl Jensen
Executive Director
Community Housing Partnership
2116 Campus Drive, SE
Rochester, MN 55904

M. W. Miller
921 3rd Avenue, SE
Rochester, MN 55904

Ralph Rathbun
2801 Markay Street, SE
Rochester, MN 55904

MPCA
18 Wood Lake Drive SE
Rochester, MN 55904

Elgin Norman
1115 East Center Street
Rochester, MN 55904

Wendell & Marlys Kuehn
4102 50th Avenue, SE
Rochester, MN 55904

Scott Samuelson
717 3rd Avenue, SE
Rochester, MN 55904

Joy Inglett
5465 Highland Ridge Lane, SE
Rochester, MN 55904

Mr. Frank Welter
President & CEO
People's Cooperative Power
3935 U.S. Highway 14 East
P.O. Box 339
Rochester, MN 55904

Brent Young
1231 9th Avenue, SE
Rochester, MN 55904

The Raduenz Family
5002 50th Avenue, SE
Rochester, MN 55904

Beth Trogstod
1621 10th Street, SE
Rochester, MN 55904

Gary and Cyndy Trux
4124 Sylvan Court, SE
Rochester, MN 55904

Interested Parties - cont.

Edward and Fran O'Neill
5000 50th Avenue, SE
Rochester, MN 55904

Berdine Erickson
1420 East Center Street
Rochester, MN 55904

Richard Noble
6500 40th Street, SE
Rochester, MN 55904

Timothy E. Johnston
1361 8 1/2 Avenue, SE
Rochester, MN 55904

The Saponari Family
1815 23 1/2 Street, SE
Rochester, MN 55904

Mark W. Wentz
1134 6th Avenue, SE
Rochester, MN 55904

Donald & Barbara Jackson
218 10th Street, SE
Rochester, MN 55904

Peggy Ball
121 6th Avenue, SE
Apartment #1
Rochester, MN 55904

Tom Kaldenberg
4036 75th Street, SE
Rochester, MN 55904

Mrs. Jobe
2719 Morcoy Street, SE
Rochester, MN 55904

Darrell Luhman
503 80th Street, SE
Rochester, MN 55904

Mr. & Mrs. Edne O. Trogstad
3802 Sunnysdale Lane, SE
Rochester, MN 55904

Ms. Jean Michaels
District 6
Olmsted County Board of
Commissioners

Olmsted County Government Center
151 4th Street, SE
Rochester, MN 55904-

Richard Freese
201 4th Street, SE
Rochester, MN 55904-

Walter Stobaugh
1415 Damon Court, SE
Rochester, MN 55904-3210

Mr. Dennis Hanson
Ward 1
City of Rochester
City Council
201 4th Street, SE
Rochester, MN 55904-3708

Mr. Walter Stobaugh
Ward 4
City of Rochester
City Council
201 4th Street, SE
Rochester, MN 55904-3708

Mr. James Rossman
District 5 and Chair
County of Olmsted
Board of Commissioners
151 4th Street, SE
Rochester, MN 55904-3710

Ms. Connie Ozinga
Director
Rochester Public Library
101 2nd Street, SE
Rochester, MN 55904-3776

Terry Adkins
City Attorney
McCarthy, Sweeney & Harkaway, P.C.
201 4th Street SE
Rochester, MN 55904-3781

Mr. Gary Neumann
Assistant City Administrator
City of Rochester
201 4th street SE
Room 266
Rochester, MN 55904-3781

Interested Parties - cont.

Mr. John Hunziker
President
City of Rochester
City Council
201 4th Street, SE
Rochester, MN 55904-3782

Mr. David Senjem
Ward 6
City of Rochester
City Council
201 4th Street, SE
Rochester, MN 55904-3782

The Honorable Chuck Canfield
Mayor
City of Rochester
201 4th Street, SE
Room 281
Rochester, MN 55904-3782

Ms. Marcia Marcoux
Ward 2
City of Rochester
City Council
201 4th Street, SE
Rochester, MN 55904-3782

Mr. Mack Evans
Ward 5
City of Rochester
City Council
201 4th Street, SE
Rochester, MN 55904-3782

Mr. Jean McConnell
Ward 3
City of Rochester
City Council
201 4th Street, SE
Rochester, MN 55904-3782

Patricia E. Hrabe
2735 Fairview Court SE
Rochester, MN 55904-4300

Mark Orlowski
208 7th Avenue SE
Rochester, MN 55904-4635

Keith Dubbels
815 1st Street, SE
Rochester, MN 55904-4673

Mr. Rob Dunnette
Plant Manager
County of Olmsted
Public Works Department
2122 Campus Drive, SE
Rochester, MN 55904-4744

Mr. Greg Wise
City of Rochester
Department of Planning and Housing
2122 Campus Drive, SE
Rochester, MN 55904-4744

Graylen K. Becker
1307 East Center Street
Rochester, MN 55904-4791

James & Donna Glaser
2015 24 1/2 Lane, SE
Rochester, MN 55904-5874

Mark Halbakken
2527 15th Street, SE
Rochester, MN 55904-5904

Mr. Jeff Thompson
District 7
Olmsted County Board of
Commissioners
2271 Cedar Park Court
Rochester, MN 55904-6087

Jeff Thompson
2258 Marion Road, SE
Rochester, MN 55904-6091

Orville Kirkham
3351 Marion Road, SE
Rochester, MN 55904-6187

George & Marilyn Buharin
3951 Oak Park Circle
Rochester, MN 55904-6190

Richard J. Willis
8309 County Road 19, SE
Rochester, MN 55904-6352

Mr. Art Hughes
KZSE-FM and KLSE-FM Radio
Minnesota Public Radio
206 South Broadway
Suite 735
Rochester, MN 55904-6502

Mr. Gary Smith
Executive Vice President
Rochester Area Economic Development,
Inc.
220 South Broadway
Suite 100
Rochester, MN 55904-6514

Interested Parties - cont.

Donald J. MacGillivray, P.E.
1924 3rd Avenue NE
Rochester, MN 55906

Troy Meyer
106 14th Avenue NE
Rochester, MN 55906

Carolyn M. Heyne
1509 13th Avenue NE
Rochester, MN 55906

Raymond J. Gibbons
2004 Summit Drive, NE
Rochester, MN 55906

Eugene Olson
2805 36th Avenue, NE
Rochester, MN 55906

William & Judith Taylor
1524 Wilshire Drive, NE
Rochester, MN 55906

Hi & Mary Lake
645-23rd Street NE
Rochester, MN 55906

Mr. Jeff Houdek
Owner
First Impression Hair Studio
401 North Broadway
Rochester, MN 55906

David Becker
2132 17th Street, NE
Rochester, MN 55906

John and Sandra Grell
102 11th Avenue, NE
Rochester, MN 55906

Ms. Sally Gallagher
Senior Citizens Services
121 North Broadway
Rochester, MN 55906

Steve Kozak
1035 Sierra Lane North East
Rochester, MN 55906

Darliss Huss
1016 21st Street, NE
Rochester, MN 55906

Mark Frederickson
900 17th Avenue, NE
Rochester, MN 55906

Mr. Kevin Ohm
Superintendent
The Rochester Cemetery Association
Oakwood Cemetery
41 7th Avenue NE
Rochester, MN 55906

Darlene G. Kelly
1318 21st Avenue, NE
Rochester, MN 55906

Bonnie Finley
1618 3rd Street, NE
Rochester, MN 55906

The Dukarts
106 14th Avenue, NE
Rochester, MN 55906

R. F. Kettering
1635 11th Avenue, NE
Rochester, MN 55906

Jerry Balm
2190 17th Street, NE
Rochester, MN 55906

Sheldon and Pearl Sheps
1251 19th Avenue, NE
Rochester, MN 55906

Interested Parties - cont.

Randy & Sara Heineke
1211 19th Avenue NE
Rochester, MN 55906

Karen Hammill
2071 Haver Hills Road, NE
Rochester, MN 55906

Beverly Livesay
316 15th Street, NE
Rochester, MN 55906

Eric P. Lofgren, M.D.
4210 Viola Road, NE
Rochester, MN 55906

Emily S. Myers
802 Sierra Lane, NE
Rochester, MN 55906

Roger K. Toulouse
1508 21 Avenue, NE
Rochester, MN 55906

Catherine F. Johnson
281 Shore Wood Circle NE
Rochester, MN 55906

Mrs. Paul La Plant
1210 2nd Street NE
Rochester, MN 55906

Mark & Cecile Burgert
1505 13th Avenue, NE
Rochester, MN 55906

Jenifer Kohn
402 31st Street, NE
Apartment #302
Rochester, MN 55906

Christian Nelson
281 Shore Wood Circle NE
Rochester, MN 55906

Bradley S. Miller, M.D.
719 15th Avenue, NE
Rochester, MN 55906

Gregory P. Duckart
106 14th Avenue NE
Rochester, MN 55906

John Roepke
2539 Northern Hills Ct., NE
Rochester, MN 55906

Conrad and Carmen Odegarden
1118 1st Street NE
Rochester, MN 55906

Carl Reading, MD
1412 21st Avenue, NE
Rochester, MN 55906

Ms. Lea C. Dacy
2541 Northridge Lane, NE
Rochester, MN 55906

Kathy Sullivan
900 17th Avenue, NE
Rochester, MN 55906

Mrs. Vera Dougher
President
Rochester League of Women Voters
633 Woodhaven Court NE
Rochester, MN 55906

Jon E. Rosenblatt
2426 Wilshire Lane, NE
Rochester, MN 55906

Richard E. Hall
559 NE 21st Street
Rochester, MN 55906

Interested Parties - cont.

Paul Zahasky
3802 Dawnhaven Court, NE
Rochester, MN 55906

Stephen M. Roberts
3326 Silver Creek Road NE
Rochester, MN 55906-2501

Mr. Roger Schmitt
Residential Design Services
109 7th Street, NE
Suite 1
Rochester, MN 55906-3663

Chistopher S. Ernest
1315 Northern Heights Drive, NE
Rochester, MN 55906-4045

Patrick E. Gannon
639 23rd Street, NE
Rochester, MN 55906-4090

Robert Van Scoy, MD
1022 Sierra Lane, NE
Rochester, MN 55906-4232

G. Theobald
1622 Northwood Drive NE
Rochester, MN 55906-4242

L. T. and Susan Lemke
620 20th Street, NE
Rochester, MN 55906-4251

Andrew Leroy, M.D. and Margaret Kehl
528 21st Street NE
Rochester, MN 55906-4252

Thomas & Martha Link
1813 13th Avenue, NE
Rochester, MN 55906-4262

The Charboneau Family
500 20th Street, NE
Rochester, MN 55906-4264

Anne & Eden McCullough
1645 11th Avenue, NE
Rochester, MN 55906-4266

Warren and Helen Zimmerman
1222 19th Avenue, NE
Rochester, MN 55906-4306

Eugene Gutzmer
2181 Parkwood Hills Drive NE
Rochester, MN 55906-4320

Mary Atkinson
1422 13th Avenue, NE
Rochester, MN 55906-4345

Debra Koppa
1324 19th Street NE
Rochester, MN 55906-4357

Paul and Val Piechowski
1625 Wilshire Drive, NE
Rochester, MN 55906-4364

Darline Guimond
204 9th Avenue NE
Rochester, MN 55906-4442

Mr. Greg Munson
Director
Quarry Hill Nature Center
701 Silver Creek Road, NE
Rochester, MN 55906-4504

Mr. Donald Nelson
Minnesota Department of Natural
Resources
2300 Silver Creek Road, NE
Rochester, MN 55906-4505

Mr. J. Cooper
Regional Hydrologist
Minnesota Department of Natural
Resources
Division of Waters
2300 Silver Creek Road, NE
Rochester, MN 55906-4505

Interested Parties - cont.

Mr. & Mrs. Mark Kenitz
1525 2nd Street, NE
Rochester, MN 55906-4573

Ron and Marlene Ruehmann
1237 2nd Street, NE
Rochester, MN 55906-4575

Jon H. Peterson
1517 NE Northern Heights Drive
Rochester, MN 55906-6934

Nancy Bishop
121 14th Street, NE
#701
Rochester, MN 55906-7063

Norm Erickson
1303 5th Avenue, NE
Rochester, MN 55906-7076

Roger Hovland
712 17th Avenue, NE
Rochester, MN 55906-7127

Eric G. Tangalos, MD
6021 Woodridge Court, NE
Rochester, MN 55906-8577

Tom Williamson
1511 Ridge Cliff Lane, NE
Rochester, MN 55906-8704

Rebecca J. Fishel
1103-1/2 Oakland Avenue West
Austin, MN 55912

Chairman
Mower County Board of Commissioners
201 1st Street, NE
Austin, MN 55912

Richard and Lavonne Zrucky
3644 County Road 15, SW
Byron, MN 55920

Harry Meyer
1814 70th Avenue, SW
Byron, MN 55920

Richard and Lavonne Maki
422 11th Avenue NW
Byron, MN 55920

David & Frieda Buesing
306 4th Avenue, NE
Box 354
Byron, MN 55920

Charles & Priscilla Ruemping
6406 County Road, 15 SW
Byron, MN 55920

Edmund and Lois Kirkpatrick
3300 110th Avenue, SW
Byron, MN 55920

Todd and Shelly Pyferoen
10352 County Road 17, SW
Byron, MN 55920

Robert and Paula Chantigian
6533 60th Street, SW
Byron, MN 55920

Barbara Pehler-Williams
1101 4th Street NW
Byron, MN 55920

Neil Melquist
6241 14th Street, NW
Byron, MN 55920

Paul Teig
523 95th Avenue, SW
Byron, MN 55920

Interested Parties - cont.

Jim and Betty Woodfork
4542 County Road 3, SW
Byron, MN 55920

Clarion and Kathleen Popp
904 4th Street NW
Byron, MN 55920

Kathie Hilliard
406 10th Avenue NW
Byron, MN 55920

Dan and Nancy White
1327 County Road 5, SW
Byron, MN 55920

Mary Petrie
504 4th Street, NW
Byron, MN 55920

The Honorable Anita Nelsen
Mayor
City of Byron
14 4th Street, NW
Byron, MN 55920

Vincent and Brenda Exe
9713 50th Street, SW
Byron, MN 55920

David and Pat Siljeborg
Rock Dell Township
8003 County Road 126, SW
Byron, MN 55920

Barb and Steve Wolf
618 Meadowlark Court
Byron, MN 55920

Charles and Emily Tvedt
2851 105th Avenue, SW
Byron, MN 55920

Louis & Linda Ward
7231 40th Street, SW
Byron, MN 55920

Richard Tompkins
320 10th Avenue, NE
Byron, MN 55920

David and Rebecca Sprenger
425 11th Avenue NW
Byron, MN 55920

Bruce and Wendy Moore
3280 Grandview Lane, SW
Byron, MN 55920

The Brekke Family
304 19th Avenue, SW
Byron, MN 55920

Carl and Ludie Frey
4500 County Road 3, SW
Byron, MN 55920

Pat Oehlke
7350 Salem Road, SW
Byron, MN 55920

Gerald and Jan Nelson
27977 655th Street
Byron, MN 55920

Roberta K. Henry
330 4th Street NW
Byron, MN 55920-1302

Mr. and Mrs. Galen Morris
413 9th Avenue NW
Byron, MN 55920-1319

Charles & Roxanne Wait
401 10th Avenue, NW
Byron, MN 55920-1322

Interested Parties - cont.

Kim Hanson
708 3rd Avenue NW
Byron, MN 55920-1346

Walter Prigge
7621 34 Street NW
Byron, MN 55920-4222

Richard Remund
437 Frontier Road, SW
Byron, MN 55920-6033

David & Patti Tvedt
11000 County Road 25 SW
Byron, MN 55920-6116

George Bolles
9736 50th Street, SW
Byron, MN 55920-6212

Michael Diercks
3029 110th Avenue SW
Byron, MN 55920-6217

Michael and Diana Coats
4026 110th Avenue, SE
Byron, MN 55920-6220

John & Dorothy Callahan
7837 35th Street, SW
Byron, MN 55920-6401

Ben and Sally Scott
8429 55th Street, SW
Byron, MN 55920-6412

Donald and Betty Nelson
7841 County Road 117, SW
Byron, MN 55920-6418

Sandra J. Toft
7139 County Road 3 SW
Byron, MN 55920-6503

Mr. Rick Frank
Houston County Zoning Office
304 South Marshall Street
Caledonia, MN 55921

Mr. A. Peter Johnson
Houston County
304 South Marshall Street
Caledonia, MN 55921-1389

Robert & Patricia Sheeler
9818 County Road 10 SE
Chatfield, MN 55923-2908

Mr. Richard Murray
Claremont Township Board
64001 130th Avenue
Claremont, MN 55924

Dale E. Rood
P.O. Box 122
401 6th Avenue, NW
Dodge Center, MN 55927

Mr. Guy Kohnhofer
County Highway Engineer
Dodge County Courthouse
Dodge County Highway Department
P.O. Box 370
Dodge Center, MN 55927-0370

Brenda Bronner
308 3rd Street NW
Dodge Center, MN 55927-9226

Charles M. Cadenhead
217 East Maple Street
P.O. Box 156
Dover, MN 55929

George Ihrke
P.O. Box 64
224 North Chatfield
Dover, MN 55929

Carol & Charles Griffin
106 North Pearl Street
Dover, MN 55929

Interested Parties - cont.

Tim and Nancy Goergen
Box 201
Dover, MN 55929-0201

Michael J. Morgan
117 South Chatfield
P.O. Box 187
Dover, MN 55929-2704

The Honorable Roger Ihrke
Mayor
City of Dover
311 Park Avenue
Dover, MN 55929-2742

Rosemary L. Reiter
7437 75th Street, NE
Elgin, MN 55932

Gerry Bermel
730 Jefferson Avenue, South
Eyota, MN 55934

Michael, James & Helen Campion
8405 50th Street, SE
Eyota, MN 55934

Mr. Gordon Krueger
Chairman
Eyota Township Board
2815 CR 102 SE
Eyota, MN 55934

Jerry and Marlis Knowlton
2343 110th Avenue, SE
Eyota, MN 55934

Ms. Julia Mason
City of Eyota
City Hall
Box 328
Eyota, MN 55934

Mr. William Lovejoy
Eyota Volunteer Fire Fighters
P.O. Box 915
Eyota, MN 55934

Jerry and Linda Bach
2729 110th Avenue, SE
Eyota, MN 55934

Terry Brown, PhD
10811 Viola Road, NE
Eyota, MN 55934-2007

Gordon Krueger
2815 County Road 102 SE
Eyota, MN 55934-2811

Martin and Mary Nelson
11501 Highway 30, SW
Hayfield, MN 55940

Kent & Lorrie Arnold
11030 80th Street, SW
Hayfield, MN 55940

Mike and Susan Senjem
10602 80th Street, SW
Hayfield, MN 55940

Kathy & Gary Woodward
8451 110 Avenue SW
Hayfield, MN 55940-8615

Todd Daniels
73323 270th Avenue
Hayfield, MN 55940-8690

Ms. Marcia Savelle
Librarian
Kasson Public Library
16 1st Avenue, NW
Kasson, MN 55944

Dodge County Independent Newspaper
Box 367
Kasson, MN 55944

Carl & Sylvia Rolfs
Route 2 Box 135
Kasson, MN 55944

Interested Parties - cont.

Robert Beaver
1003 2nd Place NW
Kasson, MN 55944-

The Hairsine Family
27609 670th Street
Kasson, MN 55944-9527

Ms. LaVonne Beach
Director
La Crecent Public Library
321 Main Street
La Crescent, MN 55947

The Honorable Michelle Rifenberg
State Representative
Minnesota State Legislature
618 McIntosh Road
Lake Crescent, MN 55947-

Ronald L. Garrison
715 North 4th street
La Crescent, MN 55947-1048

U.S. Army Corps of Engineers
St. Paul District
Mississippi River Project Office
1114 South Oak Street
La Crescent, MN 55947-1560

Ms. Kathy Buzza
Librarian
Lanesboro Public Library
202 South Parkway
Lanesboro, MN 55949-0338

Joseph Hoffman
Lewiston Development
P.O. Box 129
Lewiston, MN 55952

The Honorable Roger Laufenburger
Mayor
City of Lewiston
30 East Main Street
P.O. Box 129
Lewiston, MN 55952-0129

Kathy Rupprecht
Route 2, Box 27
Lewiston, MN 55952-9605

Ms. Donna Johnson
Director
Mabel Public Library
110 East Newburg
P.O. Box 118
Mabel, MN 55954-0118

Mr. Duane Johnson
Planning Director
Dodge County
P.O. Box 297
Mantorville, MN 55955

Edwin & Nora Butenhoff
RR1
Minnesota City, MN 55959

Reid and Arlas Johnson
RR 1, Box 284
Minnesota City, MN 55959

Steve White
Route 1, Box 281
Minnesota City, MN 55959

Art Petroff
143 Maul Drive
Minnesota City, MN 55959-

Chad & Jenelle Larson
RR1, Box 283
Minnesota City, MN 55959-9742

Mr. Jim Bier
Kalmar Town Board
5945 50th Avenue, NW
Oronoco, MN 55960

Kim Greene
307 12th Lane SW
Oronoco, MN 55960-1703

Ms. Janene Roessler
Librarian
Preston Public Library
P.O. Box 198
Preston, MN 55965-0198

Ms. Dana Young
Clerk Administrator
City of St. Charles
830 Whitewater Avenue
St. Charles, MN 55972

Interested Parties - cont.

Mr. Paul Kieffer
Kieffer Apartments, Inc.
167 Kieffer Hills Drive
St. Charles, MN 55972

Steven Fenske
148 Church Avenue #2
St. Charles, MN 55972-

Robert C. Wright, D.D.S.
636 East 8th Street
P.O. Box 667
St. Charles, MN 55972-1465

Wayne Feyereisn
Route 2, Box 134A
St. Charles, MN 55972-9750

Todd Krueger
P.O. Box 71
Spring Valley, MN 55975

James & Kathy Bartels
8837 County Road 8 SW
Stewartville, MN 55976

Mr. Matt Flynn
District 4
Olmsted County Board of
Commissioners
11011 60th Avenue, SE
Stewartville, MN 55976

Amy M. Quinn
5400 105th Street, SW
Stewartville, MN 55976

Minar Bussell
8207 City Road 15, SW
Stewartville, MN 55976

Tom Myhue
8526 90th Avenue, SW
Stewartville, MN 55976

Arie & Laura DeKok
9939 80th Avenue, SW
Stewartville, MN 55976

J. A. Johnson
19 90th Street, SE
Stewartville, MN 55976

The Kiehne Family
11133 County Road 8 SW
Stewartville, MN 55976

The Golberg Family
8450 80th Avenue, SW
Stewartville, MN 55976

Ron Barber
103 3rd Street, SW
Stewartville, MN 55976

Reggie and Rosemary Oeltjen
8618 County Road 116 SE
Stewartville, MN 55976

Mike Oberholtzer
704 Bonner Court, SE
Stewartville, MN 55976

Roland & Jean Nelson
9426 County Road 115 SW
Stewartville, MN 55976

Chester J. Daniel
512 7th Street, NE
Stewartville, MN 55976

Jane Estby
8100 Highway 30, SW
Stewartville, MN 55976

Chester and Doris Oehlke
4937 Highway 30, SW
Stewartville, MN 55976

Interested Parties - cont.

L. Smith
700 Bonner Court, SE
Stewartville, MN 55976

Ms. Patricia Johnson
Director
Stewartville Public Library
110 2nd Street, SE
Stewartville, MN 55976-1306

Fahy and Shirley Lowrie
6839 Stagecoach Road, SE
Stewartville, MN 55976-8102

Jerome G. & Ferrolyn Hilderbrandt
9633 County Road 8 SW
Stewartville, MN 55976-8155

Veronica & Rob Theobald
3529 105th Street, SW
Stewartville, MN 55976-8161

The Knutson Family
4101 105 Street, SW
Stewartville, MN 55976-8163

Bruce A. Lund
6143 Highway 30, SW
Stewartville, MN 55976-8174

Grant Larson
6408 80th Street SW
Stewartville, MN 55976-8186

Ed & Sherri Twohey
8428 80th Street, SW
Stewartville, MN 55976-8199

Ernest and Lorraine Christie
10749 County Road 108 SW
Stewartville, MN 55976-8237

Filsworth M. Simon
Route 1, Box 58
Utica, MN 55979

Julie Antonson
RR 1, Box 12
Utica, MN 55979

Ms. Judith Schierts
Librarian
Wabasha Public Library
168 Alleghany Avenue
Wabasha, MN 55981-1286

Dr. and Mrs. Eldon Koplin
1310 Conrad Drive
Winona, MN 55987

Frances Edstrom
Winona Post
P.O. Box 27
Winona, MN 55987

David Kouba
502 East 7th Street
Winona, MN 55987

Barry Nelson
RR 6, Box 828
Winona, MN 55987

Andrew E. Edin
410 West Broadway
Winona, MN 55987

Mr. Jeff Danker
Winona Daily News
601 Franklin Street
Winona, MN 55987

Vernon Leighton
Winona State University
Library
P.O. Box 5838
Winona, MN 55987

James & Margaret Miller
819 West Howard Street
Winona, MN 55987

Interested Parties - cont.

Michael Bowler
306 East 10th Street
Winona, MN 55987

Randy Tofstad
909 West 7th Street
Winona, MN 55987

Mr. Thomas Breza
Councilman At-Large
City of Winona
207 Lafayette Street
Winona, MN 55987

Dieter Mielimonka
510 East 5th
Winona, MN 55987

Mr. Duane Bell
District 1
Winona County Board of Commissioners
171 West 3rd Street
Winona, MN 55987

Harland and Pauline Knight
1305 Conrad Drive
Winona, MN 55987

George Borzyskowski
128 Lohse Drive
Winona, MN 55987

Donald Peterson
1460 Gilmore Valley Road
Winona, MN 55987

Ms. Kathy Buswell
District 2
Winona County Board of Commissioners
171 West 3rd Street
Winona, MN 55987

Douglas Boyer, M.D.
Route 3, Box 90
Winona, MN 55987

Mr. Jerry Heim
District 3
Winona County Board of Commissioners
171 West 3rd Street
Winona, MN 55987

Ms. Judith Bodway
Director of Economic Development
City of Winona
City Hall, Room 210
207 Lafayette
Winona, MN 55987

Dr. & Mrs. Thomas E. Mauszycki
1671 Valley View Drive
Winona, MN 55987

The Losinski Family
64 East 7th Street
Winona, MN 55987

Mr. Dave Stoltman
District 4
Winona County Board of Commissioners
171 West 3rd Street
Winona, MN 55987

Mr. Eric Sorensen
City Manager
City of Winona
City Hall
207 Lafayette Street
Winona, MN 55987

Jay Kohner
228 East 8th Street
Winona, MN 55987

Ms. Judy Gilow
District 5, Chair
Winona County Board of Commissioners
171 West 3rd Street
Winona, MN 55987

Mr. Darryl Smelser
News Director
Winona Radio
KAGE-AM/FM and KWNO-FM
1652 Bluffview Circle
P.O. Box 767
Winona, MN 55987

John Weimerskirch
870 52nd Avenue
Goodview, MN 55987

Ms. Jean Stockwell
Winona Post
P.O. Box 27
Winona, MN 55987-0027

Interested Parties - cont.

Richard Blahnik
P.O. Box 167
Winona, MN 55987-0167

Ms. Kathleen Davidson-Braun
Director
Winona Public Library
151 West 5th Street
P.O. Box 1247
Winona, MN 55987-1247

Mr. David Rholl
County Engineer
Winona County Highway Department
5300 Highway 61 West
Winona, MN 55987-1302

Louie Mack
644 Clarks Lane
Winona, MN 55987-2543

Mr. Robert Reinert
County Administrator
Winona County Courthouse
171 West 3rd Street
Winona, MN 55987-3129

Gerry Krage
751 West 5th Street
Winona, MN 55987-5115

John David Rowekamp, MD
79 Shady Oak Court
Winona, MN 55987-6034

Roger and Sally Coomes
23592 Lime Valley Road
Mankato, MN 56001

Frank Groenke
100 Cedar Street
Apt. 406
Mankato, MN 56001

Nina C. Runck
100 Deer Place
Mankato, MN 56001

Audrey Simmons
315 Floral Avenue
Mankato, MN 56001

Thomas Shrode
604 Mound Avenue
Mankato, MN 56001

Robert Dickhudt
54403 Street Hwy. 68
Mankato, MN 56001

Mary Dowd
118 Florence Street
Mankato, MN 56001

Bud & Shirley Lawrence
200 Parkway Place
Mankato, MN 56001

Joan Hartman
130 Valley Creek Road
Mankato, MN 56001

Ms. Becky Asleson
The Mankato Free Press
418 South 2nd Street
Mankato, MN 56001

Dr. Eddice Barber
313 Davis Street
Mankato, MN 56001

Steven C. Soley
303 Hubbell Avenue
Mankato, MN 56001

Norene Freeberg
523 Mound Avenue
Mankato, MN 56001

Attorney at Law
Randy Zellmer
600 South 2nd Street
Mankato, MN 56001

Interested Parties - cont.

Mr. Jerome Sheehan
Mankato Plumbing & Heating, Inc.
530 North Riverfront Drive
P.O. Box 426
Mankato, MN 56001

Mankato Coal Train Coalition
P.O. Box 106
Mankato, MN 56001

Mr. Michael Scullin
Minnesota State University - Mankato
Department of Anthropology
Trafton Science Center, N358
Mankato, MN 56001

Willard and Gladys Davis
1007 Pfau Street
Mankato, MN 56001

Barbara Kubicek Peterson
16 Bruce Court
Mankato, MN 56001

Mr. Tom McLaughlin
District 2
Blue Earth County Board of
Commissioners
1129 Broad Street
Mankato, MN 56001

Donald G. Sofchalk
127 Tile Street
Mankato, MN 56001

Linley Barnes
District 3
Blue Earth County Board of
Commissioners
10 Ridgewood Street
Mankato, MN 56001

Mr. Alan Rorsberg
Blue Earth County
Highway Department
Box 3083
Mankato, MN 56001

Douglas Losee
Area Hydrologist
Minnesota Department of Natural
Resources
Division of Waters
1230 South Victory Drive
Mankato, MN 56001

H. Roger Smith, Ph.D.
Professor of Urban Design
Minnesota State University
The Urban and Regional Studies Institute
106 Morris Hall
Mankato, MN 56001

Tom Rieff
17 3rd Avenue
Mankato, MN 56001

Gordon Herbst
RR 1, Box 222A
Mankato, MN 56001

James Lynch
55250 200 Lane
Mankato, MN 56001

Robert & Terri DeGezelle
330 West 7th Street
Mankato, MN 56001

Dwight and Chad Yaeger
56548 Doc Jones Road
Mankato, MN 56001

Mr. Curtis Fisher
CCIM
Fisher Development Company
209 South 2nd Street
Suite 400
Mankato, MN 56001

Ms. Katy Wortel
Executive Director
Mankato Area Environmentalists
1411 Pohl Road
Mankato, MN 56001

Dan Fogal
Route 6, Box 209
Mankato, MN 56001

Mark Halverson
133 Lincoln Street
Mankato, MN 56001

Ms. Cathie Foachin
State of Minnesota
Department of Natural Resources
1230 South Victory Drive
Mankato, MN 56001

Interested Parties - cont.

Ken Gjerde
600 West 2nd Street
Mankato, MN 56001

Lori Reineke
1508 North 2nd Street
Mankato, MN 56001

Neil and Paulette Goebel
416 West 3rd Street
Mankato, MN 56001

Kenneth Polzin
1128 East Main Street
Mankato, MN 56001

The Honorable John Dorn
State Representative
Minnesota State Legislature
1021 Orchard Road
Mankato, MN 56001-

Gladys Schmitz, SSND
170 Good Counsel Drive
Mankato, MN 56001-3138

Mike & Jean Spellacy
1730 North 2nd Street
Mankato, MN 56001-3244

Nancy A. Hamer
1723 2nd Street North
Mankato, MN 56001-3245

Harriet M. Neitge
1360 Adams Street
Mankato, MN 56001-4602

Ric Bersaw
2512 Marwood Drive
Mankato, MN 56001-5693

Mr. Howard Ward
Minneopa State Park
RR9 Box 143
Mankato, MN 56001-8219

Mark McCullough
Minnesota State University Memorial
Library
Ellis & Maywood Avenue
P.O. Box 8419-ML 3097
Mankato, MN 56001-8419

Bonnie Frisk
Route 6, Box 77
Mankato, MN 56001-9208

Ken Ziegler
56495 Harthorn Road
Mankato, MN 56001-9219

Mr. Douglas Haeder
State of Minnesota
Department of Transportation
P.O. Box 4039
Mankato, MN 56002

Joseph Leonard
General Manager
Holiday Inn
101 East Main Street
P.O. Box 3386
Mankato, MN 56002

Mr. Pete Steiner
KTOE-AM and KDOG-FM Radio
P.O. Box 1420
Mankato, MN 56002-

Jean & Glenn Thompson
1726 North 2nd Street
P.O. Box 364
Mankato, MN 56002-0354

Traverse des Sioux Library System
110 South Broad Street
P.O. Box 608
Mankato, MN 56002-0608

Jody Sailor
The Free Press
P.O. Box 3287
Mankato, MN 56002-3287

John Woodwick
Director
Minnesota Valley Action Council
410 Jackson Street
P.O. Box 3327
Mankato, MN 56002-3327

Interested Parties - cont.

Mr. Edgar Twedt
Ward 3
City of Mankato
City Council
P.O. Box 3368
Mankato, MN 56002-3368

Mr. Paul Vogel
Community Development Director
City of Mankato
10 Civic Center Plaza
P.O. Box 3368
Mankato, MN 56002-3368

Mr. John Brady
Ward 4
City of Mankato
City Council
P.O. Box 3368
Mankato, MN 56002-3368

Mr. James Harberts
Blue Earth County Zoning Administration
Box 3368
Mankato, MN 56002-3368

Ms. Kathleen Sheran
Mayor Pro-tem and Council Member at
City of Mankato
City Council
Intergovernmental Center
P.O. Box 3368
Mankato, MN 56002-3368

Mr. Bob Freyberg
Ward 1
Large City of Mankato
City Council
P.O. Box 3368
Mankato, MN 56002-3368

Ms. Anne Ganey
Ward 2
City of Mankato
City Council
P.O. Box 3368
Mankato, MN 56002-3368

Mr. Jack Considine
Ward 5
City of Mankato
City Council
P.O. Box 3368
Mankato, MN 56002-3368

The Honorable Jeff Kagermeier
Mayor
City of Mankato
Intergovernmental Center
P.O. Box 3368
Mankato, MN 56002-3368

Mr. James Stetina
Director
Minnesota Valley Regional Library
Blue Earth County Library
100 East Main Street
Mankato, MN 56002-3446

Director
Region 9 Development Commission
410 Jackson Street
P.O. Box 3367
Mankato, MN 56002-7105

Colleen Landkamer
District 1
Blue Earth County Board of
Commissioners
P.O. Box 8608
Mankato, MN 56002-8608

Veryl Morrell
Director
Blue Earth County Courthouse
County Planning and Zoning
P.O. Box 8608
Mankato, MN 56002-8608

Mr. Dennis McCoy
County Administrator
Blue Earth County Courthouse
P.O. Box 8608
Mankato, MN 56002-8608

Marilyn and Ruth Bos
618 Nicollett Avenue
North Mankato, MN 56003

Barbara Maxwell
509 McKinley Avenue
North Mankato, MN 56003

Denise Friesen
624 South Avenue
North Mankato, MN 56003

Ronald & Barbara Goodrich
Owner
GCS Properties
Route 7, Box 378-A
North Mankato, MN 56003

Curtis J. Zupfer
957 Belvista Drive
North Mankato, MN 56003

Pat Lalim
2008 Roe Crest Drive
North Mankato, MN 56003

Lavonne Craig
RR 2, Box 7
North Mankato, MN 56003

Interested Parties - cont.

Ms. Claire Kolbinger
Librarian
North Mankato Public Library
1001 Belgrade Avenue
P.O. Box 2055
North Mankato, MN 56003

Mr. Robert Redding
KEYC Television
1570 Lookout Drive
Mankato, MN 56003-0250

John Hurd
732 Garfield Avenue
North Mankato, MN 56003-2902

Clark Johnson
720 Lake Street
North Mankato, MN 56003-2911

The Honorable Don Ziegler
State Senator
Minnesota State Legislature
4915 400th Avenue
Blue Earth, MN 56013-

Mr. David Urbia
City Administrator
City of Blue Earth
City Hall - 125 West 6th Street
P.O. Box 38
Blue Earth, MN 56013-0038

Ms. Nancy Steele
Librarian
Blue Earth Community Library
124 West 7th Street
Blue Earth, MN 56013-1308

The Comfrey Times
P.O. Box 218
Comfrey, MN 56019

Ms. Jane Evers
Librarian
Comfrey Public Library
Brown Street
P.O. Box 36
Comfrey, MN 56019-0036

Mr. Steven Helget
City Administrator
City of Eagle Lake
101 Plainview Street
P.O. Box 159
Eagle Lake, MN 56024

Michael Barten
RR 1, Box 115
Eagle Lake, MN 56024

Mr. & Mrs. Daniel J. Mock
103 Plainview Street
P.O. Box 73
Eagle Lake, MN 56024

Ivan Roettger
Route 1, Box 110C
Elysian, MN 56028

Stanley & Lindy Carda
24875 E. Ball Park St.
Essig, MN 56030

Bolton & Menk
219 North Main
Fairmont, MN 56031

Mr. Harry Jenness
Special Projects Manager
Martin County
Martin County Courthouse
Room 102
Fairmont, MN 56031

Mr. Randall Rieke
Farmers Co-op of Hanska
P.O. Box 6
Hanska, MN 56041-0006

Verona Blasing
42500 West Elysian Lake Road
Janesville, MN 56048

Waseca-LeSueur Regional Library
Janesville Branch
102 West Second Street
P.O. Box H
Janesville, MN 56048

The Honorable Frank Morrill
Mayor
City of Janesville
219 North Main Street
P.O. Box O
Janesville, MN 56048-0617

Loy & Janette Young
1102 Baker's Bay Road
Kasota, MN 56050

Interested Parties - cont.

Walter Jones
Route 2, Box 247
Lake Crystal, MN 56055

J. L. Kubicek
RR 1, Box 167
Lake Crystal, MN 56055

Mary Hollingsworth
52821 223 Lane
Lake Crystal, MN 56055

LoRae Dressler
Library Supervisor
Lake Crystal Branch of the Blue Earth
County Library

100 Robinson Street
Lake Crystal, MN 56055

Jon Kutz
402 East Judson Fort Road
Lake Crystal, MN 56055-9646

Mr. Al Bennett
Chairperson
Blue Earth County Board of
Commissioners

48098 State Highway 60
Lake Crystal, MN 56055-9801

Mr. Loren Kohwen
City of Le Sueur
203 South 2nd Street
P.O. Box 176
Le Sueur, MN 56058

Lake Region Times
Box 128
Madison Lake, MN 56063

Ms. Bonnie Klein
Library Supervisor
Mapleton Branch of the Blue Earth
County Library
104 1st Avenue
P.O. Box 405
Mapleton, MN 56065

Alvis More
District 5
Blue Earth County Board of

62769 142nd Street
Mapleton, MN 56065-2241

Wildlife Technician
Peter Schaefer
MN Department Natural Resources
Commissioners 261 Hwy 15 S
New Ulm, MN 56073

KNUJ-AM
PO Box 368
New Ulm, MN 56073

Mr. Daniel Reilly
Director
New Ulm Public Library
17 North Broadway
New Ulm, MN 56073

Director
City of New Ulm
Chamber of Commerce
1 North Minnesota Street
P.O. Box 384 IC
New Ulm, MN 56073

Thomas Giefer
27332 187th Avenue
New Ulm, MN 56073

Mr. John Grindeland
County Engineer
Brown County Highway Department
1901 North Jefferson Street
New Ulm, MN 56073

Mr. Dick Seeboth
Commissioner
Brown County Board of Commissioners
1602 South Washington Street
New Ulm, MN 56073

Ms. Jane Starz
Director
Brown County Zoning Office
Brown County Courthouse
P.O. Box 248
New Ulm, MN 56073

Daniel A. Beranek
322 North Minnesota Street
New Ulm, MN 56073-

Mr. Charles Enter
County Administrator
Brown County Courthouse
P.O. Box 248
New Ulm, MN 56073-0248

Mr. Howard Zins
Chief of Police
City of New Ulm
Police Department
15 South Washington Street
New Ulm, MN 56073-3157

Interested Parties - cont.

Victoria Poage
State of Minnesota
DNR - Division of Water IV
261 Highway 15, South
P.O. Box 756
New Ulm, MN 56073-8915

Dave Haugh
P.O. Box 64
St. Clair, MN 56080

Reinhold Struhs
RR 1, Box 111
St. James, MN 56081

Ms. Cheryl Bjoin
Director
Watonwan County Library
511 2nd Avenue, South
St. James, MN 56081-1736

Ruth Johnson
417 North 7th Street
St. Peter, MN 56082

Mike Wagner
1700 Sunrise Drive
St. Peter, MN 56082

Leonard A. Hansen
813 Austin Drive
St. Peter, MN 56082-1107

Mr. Michael Riley
County Attorney
Nicollet County Courthouse
501 South Minnesota Avenue
St. Peter, MN 56082-2533

Gerald Riebel
31361 240th Street
Sleepy Eye, MN 56085

The Honorable Jim Broich
Mayor
City of Sleepy Eye
700 Prescott, NW
Sleepy Eye, MN 56085

Ms. Gail Christensen
Librarian
Dyckman Free Library
345 West Main Street
Sleepy Eye, MN 56085-1331

Herald-Disptach
109 East Main
Sleepy Eye, MN 56085-1352

Ray Taner
26352 260th Avenue
Sleepy Eye, MN 56085-4195

Larry Potter
38364 200th Street
Springfield, MN 56087

Phil Weller
P.O. Box 106
Route 14 East
Springfield, MN 56087

Kevin DeBay
308 South Range Road
Springfield, MN 56087

Richard Feser
Route 1, Box 136
Springfield, MN 56087

Ben C. Luense
123 South Park Avenue
Springfield, MN 56087-1413

Ms. Virginia Stemme
Director
Springfield Public Library
120 North Cass
Springfield, MN 56087-1506

Trent Moe
35707 200th Street
Springfield, MN 56087-9510

Howard Ward
51478 136th Lane
Vernon Center, MN 56090-

Interested Parties - cont.

Ms. Theresa Meadows
Director
Waseca-Le Sueur Regional Library
408 North State Street
Waseca, MN 56093

Ronald Purcell
809 7th Avenue, NW
Waseca, MN 56093

Brooke Jordan
News Director
KOWO-AM/KQDE-FM
222 North State Street
P.O. Box 505
Waseca, MN 56093

Mary Ellen Iversen
12052 362 Avenue
Waseca, MN 56093

Waseca-LeSueur Regional Library
Headquarters
408 North State Street
Waseca, MN 56093

Mr. Steve Kiesler
Kiesler's Campground
P.O. Box 4
Waseca, MN 56093

Ms. Angela Knish
Planning & Zoning Administration
307 North State Street
Waseca, MN 56093

Mr. J. Blue
County Engineer
Waseca County Courthouse
307 North State Street
Waseca, MN 56093-2953

Kenneth Miller
808 5th Avenue, SE
Waseca, MN 56093-3814

Area Supervisor
State of Minnesota
Department of Natural Resources

P.O. Box 86
Waterville, MN 56096

The Honorable David Minge
Representative
U.S. House of Representatives
-Fisheries
938 4th Avenue
Windom, MN 56101

The Honorable Glenn Mitzner
Mayor
City of Balaton
Attn: Herb Halverson Balaton, MN 56115

The Honorable Ted Winter
State Representative
Minnesota State Legislature
27750 110th Street
Fulda, MN 56131-

Mr. Brent Beck
Ivanhoe Times
P.O. Box 100
315 North Norman Street
Ivanhoe, MN 56142

Ms. Barbara Herschberger
Director
Ivanhoe Public Library
401 North Harold
P.O. Box 25
Ivanhoe, MN 56142

The Honorable Marlin Thompson
Mayor
City of Lake Benton
P.O. Box 206
Lake Benton, MN 56149-0206

Ms. Nancy Christenson
Director
Lake Benton Public Library
112 East Benton
P.O. Box 377
Lake Benton, MN 56149-0377

Mr. Arlen Beyer
Clerk
Charlestown Township Board
10728 Justice Avenue
Lamberton, MN 56152

The Honorable Ronald Kelsey
Mayor
City of Lamberton
P.O. Box 356
Lamberton, MN 56152

Mr. Darold Neperman
Redwood County Board of
Commissioners
413-2nd Avenue
Lamberton, MN 56152-

Ms. Karen Nissel
Librarian
Lamberton Public Library
101 East 2nd Avenue
P.O. Box 505
Lamberton, MN 56152-0505

Interested Parties - cont.

Kristen Legg
Pipestone National Monument
36 Reservation Avenue
Pipestone, MN 56164-1269

Mr. Craig Rubis
Chairman
Southwest Regional Development
Commission
2401 Broadway Avenue
Suite 1
Slayton, MN 56172-1142

The Honorable Claire Hannasch
Mayor
City of Tracy
587 Harvey Street
Tracy, MN 56175

Mr. Seth Schmidt
Tracy Headlight Herald
P.O. Box 1188
Tracy, MN 56175-0188

Ms. Mary Donaldson
Librarian
Tracy Public Library
117 3rd Street
Tracy, MN 56175-1211

The Honorable Darrell Denney
Mayor
City Hall
230 North Tyler Street
Tyler, MN 56178

Tribute
Box Q
151 North Tyler Street
Tyler, MN 56178

Ms. Carla Skjong
Librarian
Tyler Public Library
230 North Tyler
P.O. Box L
Tyler, MN 56178-0461

Mr. David Soehren
Area Wildlife Manager
State of Minnesota
Department of Natural Resources
Civic Center
323 West Schlieman
Appleton, MN 56208

Mr. Brad Lerschen
Tribal Secretary
Upper Sioux Community
P.O. Box 147
Granite Falls, MN 56241

Dallas Ross
Chairman
Upper Sioux Community
P.O. Box 147
Granite Falls, MN 56241-0147

Southwest State University Library
1501 State Street
Marshall, MN 56258

Mr. Greg Schultz
KMHL Broadcasting
KMHL-KKCK-KARL-KARZ
1414 East College Drive
P.O. Box 61
Marshall, MN 56258

Attn: Rose
State of Minnesota
Lyon County SWCD
1424 East College Drive
Suite 600
Marshall, MN 56258

Mr. Richard MacDonald
Director
Marshall-Lyon County Library
301 West Lyon Street
Marshall, MN 56258-1391

D. Sabin
112 South High
Marshall, MN 56258-1824

Mr. Steven Johnson
Assistant County Engineer
Lyon County Courthouse
607 West Main Street
Marshall, MN 56258-3021

Mr. Mark Jorgensen
County Administrator
Lyon County Courthouse
607 West Main Street
Marshall, MN 56258-3021

The Honorable David Minge
Representative
U.S. House of Representatives
Attn: Herb Halvorson
542 1st Street
Montevideo, MN 56265

Allen Gruchow
RR 2
Montevideo, MN 56265

Mr. Ernest Wabashaw
NAGPRA Representative - Cultural
Contact
Lower Sioux Indian Community
RR1, Box 308
Morton, MN 56270

Interested Parties - cont.

The Honorable Roger Prescott
Chairman
Lower Sioux Indian Community Council
RR1, Box 308
Morton, MN 56270-9801

Ms. Betty Lee
Tribal Secretary
Lower Sioux Indian Community Council
RR1, Box 308
Morton, MN 56270-9801

Mr. Eugene Short
Redwood County Board of
Commissioners
P.O. Box 130
Redwood Falls, MN 56283

Ms. Deb Hess
Chair
Redwood County Board of
Commissioners
P.O. Box 130
Redwood Falls, MN 56283

Ms. Cheryl Hanson
County Coordinator
Redwood County Board of
Commissioners
P.O. Box 130
Redwood Falls, MN 56283

Mr. Jeff Besouloff
Upper/Lower Sioux Communities
Office of the Environment
408 E. Bridge Street
Redwood Falls, MN 56283-1112

Ms. Judith Jensen
Director
Redwood Falls Public Library
509 South Lincoln Street
Redwood Falls, MN 56283-1645

Ms. Maryilyn Daub
Librarian
Wabasso Public Library
P.O. Box 190
Wabasso, MN 56293-0190

Kris Anderson
107 Riverside Drive NE
St. Cloud, MN 56304

John Wilkinson
609 2nd Avenue, North
Sartell, MN 56377

The Honorable Collin Peterson
Representative
U.S. House of Representatives
110 2nd Street South
Suite 112
Waite Park, MN 56387

Mr. John Overland
Minnesota Environmental Consulting
1731 Graydon Avenue
Brainerd, MN 56401

Mark Gardner
693 County Road 11 NW
Hackensack, MN 56452

Norman County
Environmental Services Office
16 East 3rd Avenue
Room 102
Ada, MN 56510

Mr. Robert Martin
Director of Public Works
City of Moorhead
Box 779
City Hall
Moorhead, MN 56560

Indigenous Environmental Network
P.O. Box 485
Bemidji, MN 56601

Mr. James Jones
Minnesota Indian Affairs Council
1819 Bemidji Avenue
Bemidji, MN 56601

Bemidji State University
A.C. Clark Library
1500 Birchmont Drive NE
Bemidji, MN 56601-2699

Mr. Joel Smith
Superintendent
Bureau of Indian Affairs
Minnesota Agency
Federal Building Room 418
522 Minnesota Avenue, NW
Bemidji, MN 56601-3062

Ms. Judy Roy
Tribal Secretary
Red Lake Band of Chippewa
P.O. Box 550
Red Lake, MN 56671

The Honorable Bobby Whitefeather
Chairman
Red Lake Band of Chippewa
P.O. Box 550
Red Lake, MN 56671

Interested Parties - cont.

Mary Brashier
Box 96
Aurora, SD 57002

Lelonnie Kuck
1706 Orchard Drive
Brookings, SD 57006

Mark & Rebecca Ekeland
1901 Orchard Drive
Brookings, SD 57006

Barbara Telkamp
47158 219th Street
Brookings, SD 57006

Paula Tursam
1013 Orchard Drive
Brookings, SD 57006

Nancy J. Daniels
2056 Olwen Street
Brookings, SD 57006

Jeri F. & Douglas G. Amundson
1919 Orchard Drive
Brookings, SD 57006

Gordon and Mary Tolle
310 Birch Avenue
Brookings, SD 57006

John and Carol Waltman
7250 Valley View Road
Brookings, SD 57006

Mr. Edward Hogan
Chairman
Railroad AD HOC Committee
1714 Elmwood Drive
Brookings, SD 57006

Mary McKinney
3131 Sunnyview Drive
Brookings, SD 57006

Lisa M. Wolf
1514 3rd Street
Brookings, SD 57006

Darrell Grainbois
1040 Honer Avenue
Brookings, SD 57006

Donald J. Berg
1900 Olwen Street
Brookings, SD 57006

Larry Gerjets
314 Elm Avenue
Brookings, SD 57006

Mr. Mike McClemons
Councilman
Brookings City Council
311 3rd Avenue
Brookings, SD 57006

Vernon & Cathrene Voelzke
1331 Wahpeton Pass
Brookings, SD 57006

Dennis Wm Miller
20798 473rd Avenue
Brookings, SD 57006

Mr. Jim Gilkerson
Brookings County Farm Bureau
530 34th Avenue
Brookings, SD 57006

Loran Perry
Perry Electric Inc.
Lennox
Air Conditioning & Heating
100 Main Avenue South
Brookings, SD 57006

Louis & Mary Skubic
1428 1st Street
Brookings, SD 57006

Interested Parties - cont.

Janet K. Fergen
5007 Medary Avenue
Brookings, SD 57006

Mr. & Mrs. Richard Waldner
Double W Ranch
P.O. Box 272
Brookings, SD 57006

Laura Julius
342 Lincoln Lane, South
Brookings, SD 57006

James Smolik
1206 5th Street
Brookings, SD 57006

Mike Reiserer
603 5th Avenue
P.O. Box 392
Brookings, SD 57006

Mr. Edwin Luetzow
MTR, Inc.
201 32nd Avenue
Brookings, SD 57006

Mr. Steven Britzman
City Attorney
City of Volga
319 5th Avenue
Brookings, SD 57006

Kari G. Prest
521 South 17th Avenue
Brookings, SD 57006

Ron Stangeland & Family
1709 Orchard Drive
Brookings, SD 57006

Janet Adams
1719 Victory Street
Brookings, SD 57006

Dale & Donna Tolk
217 State Avenue
Brookings, SD 57006

Judy L. Karen
1509 Orchard Drive
Brookings, SD 57006

Mr. Gary Larson
Co-chairman
Coal Train Issues Coalition
P.O. Box 8086
Brookings, SD 57006

Terry Rosheim
1301 Orchard Drive
Brookings, SD 57006

Michelle Glanzer
South Dakota State University
Agricultural Heritage Museum
Box 2207C
Brookings, SD 57006

Royce J. Emerick
312 Dakota Avenue
Brookings, SD 57006

John C. Awald
825 Arrowhead Pass
Brookings, SD 57006

David L. Foerster
505 20th Avenue
Brookings, SD 57006

Dwayne and Helen Rollag
320 Lincoln Lane South
Brookings, SD 57006

Walter E. & Kelly D. Riedell
3119 Sunnyview Drive
Brookings, SD 57006

Dennis and Jane Kruit
1005 Orchard Drive
Brookings, SD 57006

Interested Parties - cont.

Kevin W. & Kelly Nelson
120 3rd Avenue, South
Brookings, SD 57006

Robert Stewart
201 Gilley Avenue
Brookings, SD 57006

Phillip E. Plumast
2109 Elmwood Drive
Brookings, SD 57006

Gaylord Woods
1335 5th Street
Brookings, SD 57006

Douglas Vockrodt
2004 44th Street, South
Brookings, SD 57006

James and Darla Poss
1311 Orchard Drive
Brookings, SD 57006

Jerald and Donna Kluess
1031 Orchard Drive
Brookings, SD 57006

Don & Rachel Holmquist
7340 Sunset Road
Brookings, SD 57006

Dave and Karen Morgan
2138 Derdall Drive
Brookings, SD 57006

David and Barbara Walder
1308 LeGeros Drive
Brookings, SD 57006

Lyle and Lavonne Tufty
2316 42nd Street West
Brookings, SD 57006

Jim Eggen
2028 Derdall Drive
Brookings, SD 57006

Mr. Thomas Yseth
President
Dakota Ram, Incorporated
327 Main Avenue
P.O. Box 801
Brookings, SD 57006

Tim and Mary Reed
627 Medary Avenue
Brookings, SD 57006

Phil Wagner
2131 Derdall Drive
Brookings, SD 57006

Gary Larson
1345 Orchard Drive
Brookings, SD 57006

Dennis Micko
1604 Derdall Drive
Brookings, SD 57006

Howard & Marie Treseder
1728 Orchard Drive
Brookings, SD 57006

LaRon & Lori DeBoer
1718 Derdall Drive
Brookings, SD 57006

Mr. Bill Davidson
Councilman
Brookings City Council
311 3rd Avenue
Brookings, SD 57006

Ms. Keri Weems
Councilwoman
Brookings City Council
311 3rd Avenue
Brookings, SD 57006

Interested Parties - cont.

Mr. Tom Bozied
Councilman
Brookings City Council
311 3rd Avenue
Brookings, SD 57006

Mr. Nathan Bibby
Councilman
Brookings City Council
311 3rd Avenue
Brookings, SD 57006

Mr. Sam Artz
Councilman
Brookings City Council
1815 8th Street
Brookings, SD 57006

Mr. William Davidson
The Trane Company
Asset Management Services
1815 Derdall Drive
Brookings, SD 57006

James N. & Maxine Dornbush
2040 Monarch Lane
Brookings, SD 57006

Earl & Marlys Bullington
1403 Orchard Drive
Brookings, SD 57006

Lynn Anderson
1876 Skyview Lane
Brookings, SD 57006

Paula Marie Becker
1027 Orchard Drive
Brookings, SD 57006

Robert and Jessie Finch
208 LeGeros Drive
Brookings, SD 57006

Wesley Bugg
1702 Derdall Drive
Brookings, SD 57006

Dakota Rural Action
P.O. Box 549
Brookings, SD 57006

Gregg Jongeling
P.O. Box 270
311 3rd Avenue
Brookings, SD 57006

Richard Smith
Director
City of Brookings
Economic Development Corporation
2308 East 6th Street
Box 431
Brookings, SD 57006

Lewayne Erickson
316 19th Avenue, South
Brookings, SD 57006

Leslie Hammack
1333 Orchard Drive
Brookings, SD 57006

Patricia Guss
1424 1st Street
Brookings, SD 57006

Arvid and Geraldine Dills
1936 Orchard Drive
Brookings, SD 57006

Director
City of Brookings
Chamber of Commerce
P.O. Box 431
Brookings, SD 57006

Ms. Joyce Hock
Executive Secretary
Dakota, Minnesota, and Eastern Railroad
337 22nd Avenue South
P.O. Box 178
Brookings, SD 57006

The Honorable Virgil Herriott
Mayor
City of Brookings
311 3rd Avenue
P.O. Box 270
Brookings, SD 57006

Adele Sudlow
1421 LeGeros Drive
Brookings, SD 57006

Interested Parties - cont.

Mr. Mike Williams
City Manager
City of Brookings
City Hall
P.O. Box 270
Brookings, SD 57006

Lance and Mariys Johnson
1332 LeGeros Drive
Brookings, SD 57006

Donna Hess
1420 LeGeros Drive
Brookings, SD 57006

Hal and Mary Lou Halcomb
1339 Orchard Drive
Brookings, SD 57006

John Appin
1910 Lincoln Lane
Brookings, SD 57006

Merwyn Hendricks
1017 Vine Street
Brookings, SD 57006

Dan & Donna Miller
2531 30th Street NW
Brookings, SD 57006

Brad & Mabelle Bonde
2333 16th Avenue West
Brookings, SD 57006

Marlin & Kathryn Hill
2608 Meday Avenue
Brookings, SD 57006

Mr. Tim Gutormson
Mid-West Seed Services, Inc.
236 32nd Avenue
Brookings, SD 57006

Vicki Swedlund
2301-16th Avenue
Brookings, SD 57006

The Froehlich Family
2120 Derrall Drive
Brookings, SD 57006

Gary & Connie Englund
2021 25th Avenue North
Brookings, SD 57006

Mr. & Mrs. Elmer Christensen
1727 Orchard Drive
Brookings, SD 57006

Mr. Ted Eggebraaten
County Highway Superintendent
Brookings County Courthouse
314 6th Avenue
Brookings, SD 57006

Rita Majerle
1917 Victory Street
Brookings, SD 57006

Ruth Bortnam
1535 Orchard Drive
Brookings, SD 57006

Karen A. Kildahl
1519 Orchard Drive
Brookings, SD 57006

G. E. Schmieding
303 21st Avenue South
Brookings, SD 57006

Lynne Grabowska
2016 Derrall Drive
Brookings, SD 57006

Winnie Baker
719 6th Avenue
Brookings, SD 57006

Interested Parties - cont.

Dr. R. Davidson
Gentle Doctor Animal Hospital
312 Main Avenue South
Brookings, SD 57006

Kathleen A. Grady
1803 Elmwood Drive
Brookings, SD 57006

Edward Felkamp
2606 34th Avenue
Brookings, SD 57006

Norma Vanderpan
2009 Derald Drive
Brookings, SD 57006

Vernon and Jeannee Colbert
1303 Wahpeton Pass
Brookings, SD 57006

Mr. Patrick Leary
Owner
Harold's Printing Company
216 5th Avenue
P.O. Box 658
Brookings, SD 57006

Dennis & Donna Nagel
1320 LeGeros Drive
Brookings, SD 57006

William & Jeanette Gibbons
1709 Derald Drive
Brookings, SD 57006

Ms. Charlotte Smidt
South Dakota State Legislature
117 4th Street
Brookings, SD 57006

The Peterson Family
1351 Orchard Drive
Brookings, SD 57006

Lloyd Everson
1504 5th Street South
#3
Brookings, SD 57006

The Dahl Family
327 Dogwood Avenue
Brookings, SD 57006

Robert & Julie Bell
368 22nd Avenue, South
Brookings, SD 57006

Robert Pollman
1803 Orchard Drive
Brookings, SD 57006-1096

James D. Roden
727 Main Avenue
Brookings, SD 57006-1426

Ms. Elvita Landau
Director
Brookings Public Library
515 3rd Street
Brookings, SD 57006-2077

Mr. Ray Santema
Vice Chairman
The Brookings County Board of
Commissioners
314 6th Avenue
Brookings, SD 57006-2086

Ms. Barbara Telkamp
The Brookings County Board of
Commissioners
314 6th Avenue
Brookings, SD 57006-2086

Ms. Carol Pitts
Chairperson
The Brookings County Board of
Commissioners
314 6th Avenue
Brookings, SD 57006-2086

Ms. Sara Kneip
The Brookings County Board of
Commissioners
314 6th Avenue
Brookings, SD 57006-2086

Mr. Don Larson
The Brookings County Board of
Commissioners
314 6th Avenue
Brookings, SD 57006-2086

Interested Parties - cont.

The Honorable Arnold Brown
State Senator
South Dakota State Legislature
1718 Teton Pass
Brookings, SD 57006-2136

Monte and Marsha Harming
1014 1st Street
Brookings, SD 57006-2219

Jeffrey & Carrie Peters
1020 1st Street
Brookings, SD 57006-2219

Margaret Duggen
1023 4th Street
Brookings, SD 57006-2258

Joyce Lampson
1715 3rd Street
Brookings, SD 57006-2320

Margaret Streier
215 14th Avenue
Brookings, SD 57006-2523

Ed and Lynette Olson
120 Gilley Avenue
Brookings, SD 57006-2535

Richard M. Luther
124 Gilley Avenue South
Brookings, SD 57006-2535

Florence McDaniel
1442 LeGeros Drive
Brookings, SD 57006-2541

John Thompson
1437 Wisconsin Street
Brookings, SD 57006-2544

Eugene J. Platek
1717 Olwien Street
Brookings, SD 57006-2647

Lt. Col Eugene T. Butler & Dorothy M.
Butler
1626 Derdall Drive
Brookings, SD 57006-2714

James D. & Betty Lusk
1908 Derdall Drive
Brookings, SD 57006-2720

Duane & Joanne Cushing
2132 Derdall Drive
Brookings, SD 57006-2724

Dale Larson
CEO/President
Larson Manufacturing Company
2333 Eastbrook Drive
Brookings, SD 57006-2899

Mr. Perry Miller
KJJQ-AM Radio
111 Main Street
Brookings, SD 57006-3057

Donna Ritter
1913 Orchard Drive
Brookings, SD 57006-3526

Mrs. Norma Ponto
1937 Orchard Drive
Brookings, SD 57006-3526

Ms. Lois C. Bellows
511 Park Avenue
Brookings, SD 57006-3532

Dennis & Terri Jones
644 Park Avenue
Brookings, SD 57006-3533

The Honorable Robert Roe
State Representative
South Dakota State Legislature
1820 Skyview Lane
Brookings, SD 57006-3535

Interested Parties - cont.

Emil and Ethel Klavetter
1622 Buffalo Trail
Brookings, SD 57006-3609

Ronald Nelson
1604 Sioux Trail
Brookings, SD 57006-3623

Craig H. Johnson
225 Indian Hills Road
Brookings, SD 57006-3650

Jan Vandever
1929-25th Avenue North
Brookings, SD 57006-4237

JC. Wendell Carlson, Ph.D.
3101 Sunnyview Drive
Brookings, SD 57006-4245

Mr. Dan Humburg
President-Director
Residents of Sunnyview, Inc.
3308 Sunnyview Drive
Brookings, SD 57006-4283

K. Myers
3520 Medary Avenue North
Brookings, SD 57006-4286

Dale Ishol
3305 Sunnyview Drive
Brookings, SD 57006-4297

The Lambertz Family
1227 30th Street
Brookings, SD 57006-4299

David Rutsen
826 32nd Avenue
Brookings, SD 57006-4715

Leland Nordquist
1518 42nd Street
Brookings, SD 57006-6205

The Walburg Family
46733 209th Street
Brookings, SD 57006-6217

LeRoy and Carolyn Hoffman
4502 22nd Avenue North
Brookings, SD 57006-6221

The Foster Family
3911 18th Street
Brookings, SD 57006-6508

Robert and Geneva Foster
3311 18th Street
Brookings, SD 57006-6535

Kevin Telkamp
21670 476th Avenue
Brookings, SD 57006-7105

Mr. Donald Berg
South Dakota State University
Geography Department
P.O. Box 504
Scobey Hall 232
Brookings, SD 57007

Felix H. Hsia
University Station
P.O. Box 7044
Brookings, SD 57007

Stacy Dammer
KBRK-AM/FM Radio
22 2nd Avenue
Brookings, SD 57007

Ms. Nancy Marshall
Document Librarian
South Dakota State University
Hilton M. Briggs Library
Box 2115
Brookings, SD 57007-1098

Nicole Nordbye
News Producer
South Dakota Public Radio
Pugsley Center, Box 2218B
Room 402
Brookings, SD 57007-2399

Interested Parties - cont.

Lilias Jarding
Route 1, Box 37
Colman, SD 57017

Paul Erschens
RR 2, Box 138
Elkton, SD 57026-9223

The Honorable Larry Diedrich
State Representative
South Dakota State Legislature
21913 479th Avenue
Elkton, SD 57026-9739

Leah Fyten
Secretary
Flandreau Santee Sioux
Executive Committee
P.O. Box 283
Flandreau, SD 57028

Mr. Thomas Ranfranz
Chairman
Flandreau Santee Sioux
Executive Committee
P.O. Box 283
Flandreau, SD 57028

Lower James Water District
28618 County Road 11
Menno, SD 57045-9725

Jim & Nancy Schade
21095 463 Avenue
Volga, SD 57071

Blaine Hoff
511 Henry Avenue
Volga, SD 57071-2111

Scott E. Vander Wal
730 N. Samara Avenue
Volga, SD 57071-2203

Henry O. Meyer
805 N. Caspian Avenue
Volga, SD 57071-2404

Mr. & Mrs. Lyle B. Horton
411 East 1st Street
#4
Volga, SD 57071-9021

Bill McKillip
101 Jefferson Avenue
Volga, SD 57071-9095

Mr. Jerry Oster
WNAX Radio
1609 East Highway 50
Yankton, SD 57078

The Honorable Bernie Hunhoff
State Senator
State of South Dakota Legislature
P.O. Box 175
Yankton, SD 57078

The Honorable Garry Moore
State Senator
South Dakota State Legislature
2310 Western Avenue
Yankton, SD 57078-

Mr. Vernon Brown
KELO TV
501 South Phillips Avenue
Sioux Falls, SD 57104

Wendi Taylor
2013 East 31st Street, North
Sioux Falls, SD 57104

The Honorable John Thune
Representative
U.S. House of Representatives
Attn: Ryan Nelson
2310 West 41st Street
Sioux Falls, SD 57105

The Honorable Tim Johnson
Senator
U.S. Senate
715 South Minnesota
Sioux Falls, SD 57106

Ronald & Jean Tysdal
5800 East 6th Street
Sioux Falls, SD 57110

Cara Hetland
Augustana College
KRSD
2001 South Summit Avenue
P.O. Box 737
Sioux Falls, SD 57197

Interested Parties - cont.

Ms. Jeanne Koster
Director
South Dakota Peace and Justice Center
P.O. Box 405
Watertown, SD 57201

The Honorable Jeff Anderson
Mayor
City of Bruce
Bruce, SD 57220

Tom & Carol Kleinjan
20419 463rd Avenue
Bruce, SD 57220-5704

Eugene Kleinjan
20707 464th Avenue
Bruce, SD 57220-5708

L. Ardeth De Boer
46062 204th Street
Bruce, SD 57220-9542

The Honorable Mark Hoek
Mayor
City of De Smet
P.O. Drawer 70
De Smet, SD 57231-0070

Ms. Patricia Coughlin
Librarian
Hazel L. Meyer Memorial Library
P.O. Box J
De Smet, SD 57231-0156

The Honorable Doug Kazmerzak
State Representative
South Dakota State Legislature
19905 440th Avenue
Erwin, SD 57233-5315

Mr. Jerry Runia
President
Brookings County Farm Bureau
19533 - 458th Avenue
Estelline, SD 57234

Joyce Hodges
300 South Walters Avenue
Lake Preston, SD 57249

American Indian Culture Research
Center
Box 98
Blue Cloud Abbey
Marvin, SD 57251

Mr. Andrew Grey, Sr.
Chairman
Sisseton-Wahpeton Sioux Tribe
P.O. Box 509
Agency Village, SD 57262

Mr. Daryl Quinn
Secretary
Sisseton-Wahpeton Sioux Tribe
P.O. Box 509
Agency Village, SD 57262

Sisseton Wahpeton Community College
Library
P.O. Box 689
Agency Village, SD 57262

The Honorable Robert Weber
State Representative
South Dakota State Legislature
16288 472nd Avenue
Strandburg, SD 57265-9679

The Honorable Harold Halverson
State Senator
South Dakota State Legislature
47049 151st Street
Twin Brooks, SD 57269

The Honorable Art Frysie
State Representative
South Dakota State Legislature
43410 188th Street
Willow Lake, SD 57278-5406

Ms. Jackie Hess
Librarian
Mitchell Public Library
221 North Duff
Mitchell, SD 57301

Mr. Alex Huff
Dakota Southern Railway
P.O. Box 436
Chamberlain, SD 57325-0436

Ms. Roxanne Sazue
Chairwoman
Crow Creek Sioux Tribe
P.O. Box 50
Fort Thompson, SD 57339

Mr. Steve McLaughlin
Superintendent
Bureau of Indian Affairs
Crow Creek Agency
P.O. Box 139
Fort Thompson, SD 57339

Interested Parties - cont.

Ms. Tina Grey Owl
Secretary
Crow Creek Sioux Tribal Council
P.O. Box 50
Fort Thompson, SD 57339

Mr. Barry Alger
County Commissioner - Chair
Hyde County Courthouse
P.O. Box 379
Highmore, SD 57345-0379

Ms. Mary Tabbert
Librarian
Hyde County Library
P.O. Box 479
Highmore, SD 57345-0479

Paul Mavity
1790 Lawnridge, SE
Huron, SD 57350

Dr. Robert Hohm
455 Kansas Avenue SE
Huron, SD 57350

Mr. Daniel Cumbee
President
Dakotaland Federal Credit Union
1371 Dakota Avenue, South
Huron, SD 57350

Bush Fullerton
West Highway 14
P.O. Box 1425
Huron, SD 57350

Ken Solomon
557 Utah, SE
Huron, SD 57350

Barry Cranston
Assistant Director
Greater Huron Development Corporation
375 Dakota Avenue South
Suite 102
Huron, SD 57350

Mr. Earl Nordby
Pepsi-Cola Bottling Company
777 4th Street, NW
P.O. Box 1335
Huron, SD 57350

Donna Morse
892 West Park Avenue, NW
Huron, SD 57350

Ed Matthews
49 1/2 9th Street, SE
Huron, SD 57350

Ms. Colleen Smith
Librarian
Huron Public Library
521 Dakota Avenue, South
Huron, SD 57350

Mr. Robert Broer
District 5
Beadle County Board of Commissioners
21809 SD Highway 37
Huron, SD 57350

The Honorable Ron Volesky
State Representative
South Dakota State Legislature
356 Dakota Avenue, South
Huron, SD 57350

Brian Miller
1115 Simmons Avenue, SE
Huron, SD 57350

Robin Wallum
One Stop Career Center
P.O. Box 1356
Huron, SD 57350

John Deniger
1925 McDonald Drive
Huron, SD 57350

Mr. Ralph Borkowski
City Administrator
City of Huron
P.O. Box 1369
Huron, SD 57350

Rick Daugherty
320 18th Street, SE
Huron, SD 57350

Mr. James Borszich
Commissioner
City of Huron
P.O. Box 1369
Huron, SD 57350-

Interested Parties - cont.

Mr. David McGirr
Commissioner
City of Huron
P.O. Box 1369
Huron, SD 57350-

Mr. Rodney Freeman, Jr.
Churchill, Manolis, Freeman, Kludt &
Shelton
333 Dakota Avenue South, 2nd Floor
P.O. Box 176
Huron, SD 57350-0176

Mr. Randall Lampe
Chairman
Huron Housing & Redevelopment
Authority
53 3rd Street, SW
P.O. Box 283
Huron, SD 57350-0283

Mr. Kenneth Kauth
District 4
Beadle County Board of Commissioners
County Commissioner
P.O. Box 845
Huron, SD 57350-0845

Mr. Eldon Dahl
District 3
Beadle County Board of Commissioners
County Commissioner
P.O. Box 845
Huron, SD 57350-0845

Mr. Jerold Zerfoss
District 2, Chair
Beadle County Board of Commissioners
County Commissioner
P.O. Box 845
Huron, SD 57350-0845

Mr. Randy Ziegeldorf
District 1
Beadle County Board of Commissioners
P.O. Box 845
Huron, SD 57350-0845

Mr. Mike Johnson
County Highway Superintendent
Beadle County Courthouse
P.O. Box 165
655 4th Street NW
Huron, SD 57350-0845

Lynn Schneider
President
Marquette Bank of South Dakota, N.A.
P.O. Box 848
Huron, SD 57350-0848

Ms. Connie Hofer
Marquette Bank of South Dakota, N.A.
P.O. Box 848
Huron, SD 57350-0848

Mr. Thomas Gietzen
Senior Vice President
Marquette Bank of South Dakota, N.A.
P.O. Box 848
Huron, SD 57350-0848

Mr. Dick Werner
President
Norwest Bank South Dakota, N.A.
405 Dakota Avenue, South
P.O. Box 1238
Huron, SD 57350-1238

Ms. Jan Manolis
Commissioner
City of Huron
P.O. Box 1369
Huron, SD 57350-1369

Mr. Bush Fullerton
Huron Equipment Company
P.O. Box 1425
Huron, SD 57350-1425

Mr. Richard Kjerstad
President
South Dakota Farm Bureau
2225 Dakota Avenue, South
P.O. Box 1426
Huron, SD 57350-1426

Mr. Rob Nordin
Executive Director
Huron Area Chamber of Commerce
15 4th Street, SW
Huron, SD 57350-2495

Harold Bisch
1901 Ohio Avenue, SW
Huron, SD 57350-2506

The Honorable Pat Haley
State Representative
South Dakota State Legislature
766 Utah Avenue, SE
Huron, SD 57350-2906

Mr. Robert Jones
Commissioner
City of Huron
1524 Ohio Avenue SW
Huron, SD 57350-3858

Terry Taylor
General Manager
KIJV-AM and KZNC-FM Radio
1726 Dakota Avenue South
Huron, SD 57350-4024

Peg Woolridge
15 4th Street SW
Huron, SD 57350-4655

Interested Parties - cont.

Carol Breen
304 7th Avenue SE
Rochester, MN 55904-7217

Donna Bush Wilson
1204 5th Street, SE
Rochester, MN 55904-7218

Michael LaPlante
1143 3-1/2 Street
Rochester, MN 55904-7232

Sandra Nelson
5497 Highland Ridge Lane SE
Rochester, MN 55904-8108

Jeanette McNee
515 80th Street, SE
Rochester, MN 55904-8430

Ed Rowley
11 80th Street, SE
Rochester, MN 55904-8435

Robert & Allene Coty
5009 Deerwood Lane, SE
Rochester, MN 55904-8653

Randolph Schroeder
4428 77th Avenue, SE
Rochester, MN 55904-8675

Modine and Judy Scherr
4221 77th Avenue, SE
Rochester, MN 55904-8681

Mike Herber
3211 60th Avenue, SE
Rochester, MN 55904-9012

The Ruff Family
5831 Colonial Lane, SE
Rochester, MN 55904-9057

Nickelson
5765 Colonial Lane, SE
Rochester, MN 55904-9064

Bruce & Jennifer Bjorgum
2867 Shadow Drive, SE
Rochester, MN 55904-9070

Professor of Urology and Biochemistry
Donald Tindall, Ph.D.
Mayo Clinic
200 First Street, SW
Rochester, MN 55905

Mr. George Malkasian, M.D.
Executive Director
Zumbro Valley Medical Society
200 1st Street, SW
Rochester, MN 55905

Mr. Peter Amadio
Zumbro Valley Medical Society
200 1st Street, SW
Rochester, MN 55905

Claude Deschamps, MD
200 1st Street, SW
Rochester, MN 55905-0001

Mr. Robert MacCarty, M.D.
Diagnostic Radiology
Mayo Clinic
200 1st Street, SW
Rochester, MN 55905-0001

Mr. Michael Wood
President and Chief Executive Officer
Mayo Foundation
200 1st Street, SW
Rochester, MN 55905-0001

Carl and Margaret Biel
201 1/2 15th Street, NE
Rochester, MN 55906

David Murray
1732 Northern Valley Drive, NE
Rochester, MN 55906

Interested Parties - cont.

Alvin Arbeiter
780 Dakota Avenue, North
Huron, SD 57350-4710

Andes, SD 57356

Ms. Charon Asetoyer
Executive Director
Native American Women's Health

809 Height Street
P.O. Box 572
Lake Andes, SD 57356

Mr. Les Labahn
Randall Rcd Coord
P.O. Box 247
Education Resource Center Lake

Ms. Madonna Archambeau
Chairperson
Yankton Sioux Tribal Business & Claims
Committee

P.O. Box 248
Marty, SD 57361-

Miller Press
Box 196
Miller, SD 57362

Ms. Debra Ruhnke
Librarian
Hand County Library

402 North Broadway
Miller, SD 57362-1438

The Honorable Joanne Lockner
State Representative
South Dakota State Legislature
301 3rd Street, NW
St. Lawrence, SD 57373-2324

Mr. Jeff Reinhardt
Trustee Presentative
City of Wessington
P.O. Box 38
Wessington, SD 57381

Ms. Donna Runge
Director
Wessington Public Library
P.O. Box 108
Wessington, SD 57381-0108

Environmental Coordinator
U.S. Bureau of Indian Affairs
Aberdeen Area Office
115 4th Avenue, SE
Aberdeen, SD 57401

George Nicholas
804 12th Avenue, NE
Aberdeen, SD 57401-2561

The Honorable Robert Drake
State Senator
South Dakota State Legislature
P.O. Box N
Bowdle, SD 57428-0300

The Honorable Jay Duenwald
State Representative
South Dakota State Legislature
RR 1, Box 78
Hoven, SD 57450-9625

Mr. Stephen Cournoyer, Jr.
Chairman
Yankton Sioux Tribe
Sioux Tribal Business and Claims
Committee
P.O. Box 248
Marty, SD 57461

Mr. Ben Gonzales
Secretary
Yankton Sioux Tribe
P.O. Box 248
Marty, SD 57461

Rick Borgensen
800 West Dakota
Pierre, SD 57501

The Honorable Fred Whiting
State Senator
South Dakota State Legislature
Ramkota Inn
Pierre, SD 57501

Mr. Geoff Simon
Commissioner
City of Pierre
222 East Dakota Avenue
Pierre, SD 57501

South Dakota Rural Development
Engineers
711 East Wells Avenue
Pierre, SD 57501

The Honorable Jarvis Brown
Council
South Dakota State Legislature
Governors Inn
Pierre, SD 57501

Mr. John Bartel
State Representative U.S. Army Corps of
HCR 83
28563 Powerhouse Road
Pierre, SD 57501

Interested Parties - cont.

Mr. James Nelson
Environmental Engineer
State of South Dakota
Department of Transportation
700 Broadway Avenue, East
Pierre, SD 57501

SD FLD OFC ES
U.S. Department of Interior
Fish and Wildlife Service
420 South Garfield Avenue
Suite 400
Pierre, SD 57501

Ms. Laurie Gill
Commissioner
City of Pierre
222 East Dakota Avenue
Pierre, SD 57501

The Honorable Jerry Shoener
State Senator
South Dakota State Legislature
Ramkota Inn
Pierre, SD 57501

Jim Kuchta
1317 Winchester Drive
Pierre, SD 57501

Pete Obermeier
323 South Jackson
Pierre, SD 57501

Susan Dolezal
4410 Sandwedge Drive
Pierre, SD 57501

Gary Drewes
Box 675
Pierre, SD 57501

The Honorable Robert Duxbury
State Senator
South Dakota State Legislature
124 Lakeview Drive
Pierre, SD 57501

The Honorable Charles Flowers
State Senator
South Dakota State Legislature
Kings Inn
Pierre, SD 57501

Tim Engel
711 North Madison Avenue
Pierre, SD 57501

Mike and Melissa Jockheck
1515 East Park Street
Pierre, SD 57501

Laurie Schultz
804 Bridgeview
Pierre, SD 57501

Warren May
P.O. Box 160
Pierre, SD 57501

Mr. Stan Schwellenbach
Commissioner
City of Pierre
222 East Dakota Avenue
Pierre, SD 57501

Ms. Susan Tracy
State of South Dakota
Department of Transportation
700 East Broadway
Pierre, SD 57501

The Honorable Robert Benson
State Senator
South Dakota State Legislature
Ramkota Inn
Pierre, SD 57501

The Honorable M. Rounds
State Senator
South Dakota State Legislature
806 Cherry Drive
Pierre, SD 57501

The Honorable Randy Frederick
State Senator
South Dakota State Legislature
Kings Inn
Pierre, SD 57501

Mr. Tim Olson
State of South Dakota
Department of Games, Fish, and Parks
523 East Capitol Avenue
Joe Foss Building
Pierre, SD 57501

George Biggs
202 South Filmore
Pierre, SD 57501

Interested Parties - cont.

Mr. Larry Weiss
Commissioner
City of Pierre
222 East Dakota Avenue
Pierre, SD 57501

The Honorable Carol Fitzgerald
State Representative
South Dakota State Legislature
604 Yucca Drive
Pierre, SD 57501

The Honorable Arlene Ham
State Senator
South Dakota State Legislature
Ramkota Inn
Pierre, SD 57501

The Honorable Quinten Burg
State Representative
South Dakota State Legislature
109 Riverside Drive
Pierre, SD 57501

Director
State of South Dakota
Agriculture Development Division
523 East Capitol Avenue
Pierre, SD 57501

Keith Nuttbrock
209 East Broadway
Pierre, SD 57501

Director
State of South Dakota
Dept. of Environment and Natural
Resources - Watershed Protection
Program

523 East Capitol Avenue
Joe Foss Building
Pierre, SD 57501

Bernard Stoesser
4305 Sandwedge Drive
Pierre, SD 57501

Marlys Nellerone
500 North Poplar
Pierre, SD 57501

Patrick Callahan
Dakota News Network
Box 1197
Pierre, SD 57501

Ms. Jeanne Goodman
Administrator
State of South Dakota
Dept. of Environment and Natural
Resources - Air Quality
523 East Capitol Avenue
Joe Foss Building
Pierre, SD 57501

Chet Brokaw
The Associated Press
P.O. Box 368
Pierre, SD 57501

Mr. John White
Director
State of South Dakota
Office of the State Engineer
523 East Capitol Avenue
Joe Foss Building
Pierre, SD 57501

Larry Melvin
1011 E. Wells Avenue
Pierre, SD 57501

Thomas Bowers
622 East Missouai
Pierre, SD 57501

Dennis Parks
308 South Lincoln Avenue
Pierre, SD 57501

Arlyce Peterson
406 North Evans
Pierre, SD 57501

Stan Schuelleabuch
1108 North Grand
Pierre, SD 57501

Vennie Heibel
1120 East Park
Pierre, SD 57501

Terry Varilek
918 East Capitol
Pierre, SD 57501

Mr. Tim Tollefsrud
Administrator
State of South Dakota
Dept. of Environment and Natural
Resources - Surface Water Quality
523 East Capitol Avenue
Joe Foss Building
Pierre, SD 57501

Interested Parties - cont.

David Voeltz
801 North Harrison Avenue
Pierre, SD 57501

Alexandra Asbury
P.O. Box 236
Pierre, SD 57501

John Therrier
P.O. Box 985
Pierre, SD 57501

The Honorable Jeff Monroe
State Representative
South Dakota State Legislature
362 South Pierre Street
Pierre, SD 57501

Jean Coull
307 North Harrison
Pierre, SD 57501

Caroline Sorensen
124 South Washington
Pierre, SD 57501

The Honorable Gary Drewes
Mayor
City of Pierre
222 East Dakota Avenue
Pierre, SD 57501

John R. Simpson
318 West Pleasant
Pierre, SD 57501

Ms. Mary Waldoch
Director
Rawlins Municipal Library
1000 East Church Street
Pierre, SD 57501

Charles and Myrtle Backlund
29740 SD Highway 34
Pierre, SD 57501

Jim Green
300 South Filmore
Pierre, SD 57501

Geoff Simon
521 West 5th Street
Pierre, SD 57501

Lynell Asher
503 South Pierce
Pierre, SD 57501

Jim Carlon
Box 249
Pierre, SD 57501

Mike Pulliam
P.O. Box 393
Pierre, SD 57501-0393

Rick Vallery
116 North Euclid
Box 667
Pierre, SD 57501-0667

Mr. Kevin King, P.E.I.L.S.
City Engineer
City of Pierre
P.O. Box 1253
Pierre, SD 57501-1253

KCCR-AM and KLXS-FM Radio
106 West Capitol
Pierre, SD 57501-2108

Mr. Jay Vogt
State Historic Preservation Officer
South Dakota State Historical Society
Department of Education and Cultural

State of South Dakota
Historic Preservation Office
900 Governors Drive
Pierre, SD 57501-2217

Mr. Steven Littlefield
State of South Dakota
State Historic Preservation Officer
900 Governors Drive
Affairs Pierre, SD 57501-2217

Cultural Heritage Center
900 Governors Drive
Pierre, SD 57501-2217

Interested Parties - cont.

South Dakota State Library
Government Publications Department
800 Governors Drive
Pierre, SD 57501-2235

Sharon K. Klocker
903 North Madison
Pierre, SD 57501-2323

Mr. Wally Larson
Commissioner
Hughes County Commission
104 East Capitol Avenue
Pierre, SD 57501-2517

Mr. Arlo Mortimor
Commissioner
Hughes County Commission
104 East Capitol Avenue
Pierre, SD 57501-2563

Ms. Sue Schaefer
County Administrator
Hughes County Commission
104 East Capitol Avenue
Pierre, SD 57501-2563

Mr. Eldon Russell
Commissioner
Hughes County Commission
104 East Capitol Avenue
Pierre, SD 57501-2563

Mr. Mark Venner
Commissioner
Hughes County Commission
104 East Capitol Avenue
Pierre, SD 57501-2563

Mr. Ron Baumgart
Commissioner
Hughes County Commission
104 East Capitol Avenue
Pierre, SD 57501-2563

Laurel Selken
State of South Dakota
Department of Transportation
700 East Broadway
Becker-Hansen Building
Pierre, SD 57501-2586

Larry Keeler
1300 North Harrison
#308
Pierre, SD 57501-2828

Charles McGuigan
1609 Circle Drive
Pierre, SD 57501-2856

Mr. David Ryan
State of South Dakota
Department of Natural Resources
523 East Capitol Avenue
Pierre, SD 57501-3182

Mr. John Cooper
Secretary
State of South Dakota
Department of Game, Fish & Parks
523 East Capitol Avenue
Joe Foss Building
Pierre, SD 57501-3182

Mr. Jerry Klocker
Klocker Furniture
765 East Sioux
Pierre, SD 57501-3321

Mr. Webster Two Hawk, Sr.
Commissioner
State of South Dakota
Office of Tribal Government Relations
Capitol Lake Plaza
711 East Wells Avenue
Pierre, SD 57501-3369

Ms. Brenda Forman
South Dakota Association of
SD 57501-4426
2510 East Franklin
Pierre, SD 57501-3750

Teddi Martell
337 South Harrison
Cooperatives

Joyce Bauer
915 South McKinley
Pierre, SD 57501-3928 Pierre,

The Honorable Mark Barnett
Attorney General
State of South Dakota
500 East Capitol Avenue
Pierre, SD 57501-5070

Mr. Jim Burg
Commissioner
State of South Dakota
Public Utilities Commission
Capitol Building, 1st Floor
500 East Capitol Avenue
Pierre, SD 57501-5070

The Honorable William Janklow
Governor
State of South Dakota
Office of Governor
State Capitol
500 East Capitol
Pierre, SD 57501-5070

Interested Parties - cont.

Alberta Olson
2580 Essex Road
Pierre, SD 57501-5614

U.S. Army Corps of Engineers
South Dakota Regulatory Office
28563 Powerhouse Road
Room 120
Pierre, SD 57501-6174

O. N. Hicks
28729 Bad River Road
Fort Pierre, SD 57532

Curtis A. Weber
Box 611
Fort Pierre, SD 57532

Peggy Cruse
205 Islay Avenue
Fort Pierre, SD 57532

Lou Ann Dunn
HCR 32, Box 4E
Fort Pierre, SD 57532-9401

Mr. Terry Stout
Librarian
Jackson County Library
P.O. Box 368
Kadoka, SD 57543

Mr. Kelly Fortune
County Commissioner - Chair
Jackson County Courthouse
P.O. Box 280
Kadoka, SD 57543-0280

Mr. Jim Horst
County Highway Superintendent
Jackson County Courthouse
P.O. Box 594
Kadoka, SD 57543-0594

Cleveland Her Many Horses
Superintendent
U.S. Bureau of Indian Affairs
Lower Brule Agency
P.O. Box 190
Lower Brule, SD 57548

Mr. Scott Jones
Cultural Preservation Officer
Lower Brule Sioux Tribe
P.O. Box 187
Lower Brule, SD 57548-0187

Sandy LaCroix
Secretary
Lower Brule Sioux Tribal Council
P.O. Box 187
Lower Brule, SD 57548-0187

Mr. Michael Jandreau
Chairman
Lower Brule Sioux Tribal Council
P.O. Box 187
Lower Brule, SD 57548-0187

Mr. Doolittle
P.O. Box 145
Midland, SD 57552

Sonia Nemeč
P.O. Box 242
Midland, SD 57552

Linda Schofield
P.O. Box 202
Midland, SD 57552

Leroy and Carol Hunt
P.O. Box 194
Midland, SD 57552

Daniel Carlson
P.O. Box 155
Midland, SD 57555

Sinte Gleska University
Library
East Highway 18
Mission, SD 57555

Mr. Marrell Louder
County Commissioner
Jones County Commission
Jones County Courthouse
Murdo, SD 57559

The Honorable Wayne Esmay
Mayor
City of Murdo
P.O. Box 432
Murdo, SD 57559

Interested Parties - cont.

Jones County Courthouse
Murdo, SD 57559

Mr. Monte Anker
County Commissioner
Jones County Commission
Jones County Courthouse
Murdo, SD 57559

Mr. Don Weber
County Commissioner
Jones County Commission
Jones County Courthouse
Murdo, SD 57559

Roy and Margaret Pfeifer
P.O. Box 676
Philip, SD 57567

Joseph Gittings
P.O. Box 189
Philip, SD 57567

William O'Conner
Box 548
Philip, SD 57567

Rita O'Connell
P.O. Box 908
Philip, SD 57567

Neal Brunskill
HC 01 Box 20
Philip, SD 57567

Tom Riedy
P.O. Box 294
Philip, SD 57567

Rick Millage
P.O. Box 152
Philip, SD 57567

Ms. Tanya McIlravy
District Manager
Haakon County Conservation District
P.O. Box 130
Philip, SD 57567

Don Weller
P.O. Box 346
Philip, SD 57567-0346

Ms. Audrea Cook
Pioneer Review
Box 788
Philip, SD 57567-0788

Tyrone Moos
HC 1, Box 1
Philip, SD 57567-9601

The Honorable Cooper Garnos
State Representative
South Dakota State Legislature
HC 67, Box 3
Presho, SD 57568

Mr. William Kindle
President
Rosebud Sioux Tribal Council
P.O. Box 430
Rosebud, SD 57570

Terry Gray
Archivist and NAGPRA Coordinator
Rosebud Sioux Tribe
P.O. Box 490
Rosebud, SD 57570

Mr. Freemont Fallis
Coordinator
Rosebud Sioux Tribe
Treaty Commission
P.O. Box 430
Rosebud, SD 57570

Mr. Larry Burr
Superintendent
U.S. Bureau of Indian Affairs
Rosebud Agency
P.O. Box 550
Rosebud, SD 57570

Ms. Geraldine Night Pipe
Secretary
Rosebud Sioux Tribal Council
P.O. Box 430
Rosebud, SD 57570

The Honorable John Koskan
State Representative
South Dakota State Legislature
HCR 1, Box 117A
Wood, SD 57585-9611

Interested Parties - cont.

Colette Iron Hawk
Secretary
Cheyenne River Sioux Tribal Council
P.O. Box 590
Eagle Butte, SD 57625

Mr. Sabastian "Bronco" Lebau
Cheyenne River Tribal Preservation
Officer
Cheyenne River Sioux Tribal Council
P.O. Box 590
Eagle Butte, SD 57625

Cheyenne River Community College
Library
P.O. Box 220
Eagle Butte, SD 57625

Cheyenne River Resource Council
Library
P.O. Box 590
Eagle Butte, SD 57625

Mr. Gregg Bourland
Chairman
Cheyenne River Sioux Tribe
P.O. Box 590
Eagle Butte, SD 57625

Mr. Russell McClure
Superintendent
Bureau of Indian Affairs
Cheyenne River Agency
P.O. Box 325
Eagle Butte, SD 57625

Presentation College
Lakota Campus
P.O. Box 1070
Eagle Butte, SD 57625-1070

The Honorable Tim Johnson
Senator
U.S. Senate
405 East Omaha
Suite D
Rapid City, SD 57701

South Dakota School of Mines and
Technology
Devereaux Library
501 East St. Joseph Street
Rapid City, SD 57701

Mr. Babe Steinburg
Councilman-Ward 2
City of Rapid City
City Council
300 6th Street
Rapid City, SD 57701

Ms. Marcia Elkins
Planning Director
Rapid City Area Metropolitan Planning
Organization
300 6th Street
Rapid City, SD 57701

Mr. Jerry Munson
Councilman-Ward 3
City of Rapid City
City Council
300 6th Street
Rapid City, SD 57701

Mr. Alan Hanks
Councilman-Ward 1
City of Rapid City
City Council
300 6th Street
Rapid City, SD 57701

Mr. Tom Johnson
Councilman-Ward 1
City of Rapid City
City Council
300 6th Street
Rapid City, SD 57701

Mr. Todd Ossenfort
Councilman-Ward 2
City of Rapid City
City Council
300 6th Street
Rapid City, SD 57701

The Honorable Jim Shaw
Mayor
City of Rapid City
300 6th Street
Rapid City, SD 57701

Mr. Steve Rolinger
Councilman-Ward 3
City of Rapid City
City Council
300 6th Street
Rapid City, SD 57701

Ms. Karen Bulman
Councilman-Ward 4
City of Rapid City
City Council
300 6th Street
Rapid City, SD 57701

Mr. Jeffrey Nettleton
U.S. Bureau of Reclamation
Rapid City Field Office
515 9th Street
Room 101
Rapid City, SD 57701

Mr. Kenneth Parr
U.S. Bureau of Reclamation
Rapid City Field Office
515 9th Street
Room 101
Rapid City, SD 57701

Marlin Johnson
Environmental Planner
Pennington County
Planning Department
Pennington County Courthouse
315 St. Joseph Street
Rapid City, SD 57701

Interested Parties - cont.

Dan Jennissen
Planner
Pennington County
Planning Department
Pennington County Courthouse
315 St. Joseph Street
Rapid City, SD 57701

Mr. Mel Dreyer
Councilman-Ward 5
City of Rapid City
City Council
300 6th Street
Rapid City, SD 57701

Mr. Ron Koreger
Councilman-Ward 4
City of Rapid City
City Council
300 6th Street
Rapid City, SD 57701

Mr. Mark Kirkeby
County Commissioner - Chair
Pennington County
Board of Commissioners
Pennington County Court House
315 St. Joseph Street
Rapid City, SD 57701-2879

Mr. Hiene Junge
County Highway Superintendent
Pennington County Courthouse
315 St. Joseph Street
Rapid City, SD 57701-2879

The Honorable Thomas Hennies
State Representative
South Dakota State Legislature
300 Kansas City Street
Rapid City, SD 57701-5309

Sam Clanson
Box 1314
Rapid City, SD 57702

Ms. Nancy Hilding
President
Prairie Hills Audubon Society
P.O. Box 792
Rapid City, SD 57701

Scott Anderson
Director
Pennington County
Planning Department
Pennington County Courthouse
315 St. Joseph Street
Rapid City, SD 57701

KTOQ-AM Radio
306 East St. Joseph Street
Rapid City, SD 57701

Ms. Delores Coffing
County Commissioner
Pennington County
Board of Commissioners
Pennington County Court House
315 St. Joseph Street
Rapid City, SD 57701-2879

Mr. Ken Davis
County Commissioner - Vice-Chair
Pennington County
Board of Commissioners
Pennington County Court House
315 St. Joseph Street
Rapid City, SD 57701-2879

The Honorable Cheryl Madden
State Senator
South Dakota State Legislature
4955 Enchanted Pines Drive
Rapid City, SD 57701-9252

James Strain
4119 Pleasant Drive
Rapid City, SD 57702

The Honorable Alice McCoy
State Representative
South Dakota State Legislature
142 MacArthur Street
Rapid City, SD 57701

Ms. Ann Bush
Councilman-Ward 5
City of Rapid City
City Council
300 6th Street
Rapid City, SD 57701

Mr. Dan Daly
Rapid City Journal
507 Main Street
Rapid City, SD 57701-2733

Ms. Kendra Larson
County Commissioner
Pennington County
Board of Commissioners
Pennington County Court House
315 St. Joseph Street
Rapid City, SD 57701-2879

Ms. Susan Braunstein
Reference Librarian
Rapid City Public Library
610 Quincy Street
Rapid City, SD 57701-3655

Gary Nelson
4842 Whispering Pines Drive
Rapid City, SD 57702

The Honorable Michael Derby
State Representative
South Dakota State Legislature
2735 Country Club Drive
Rapid City, SD 57702-

Interested Parties - cont.

Mr. Brent Gulbranson
KNBN-TV
2424 South Plaza Drive
Rapid City, SD 57702-9379

Ellsworth Air Force Base Library
2650 Doolittle Drive
Building 3910
Ellsworth, SD 57706

Zonta Club of the Black Hills
P.O. Box 8163
Rapid City, SD 57709

James G. Sword
P.O. Box 8250
Rapid City, SD 57709

Sam Clauson
Sierra Club
Black Hills Group
P.O. Box 1624
1101 E. Philadelphia
Rapid City, SD 57709

Ms. Jenn Renner
KOTA-TV & KOTA-AM Radio
518 St. Joseph Street
P.O. Box 176D
Rapid City, SD 57709-0176

Mr. Dan Baker
Dacotah Cement
P.O. Box 360
501 North Onge Street
Rapid City, SD 57709-0360

Mr. Aaron Erickson
KEVN/KIVW Fox 7
P.O. Box 677
Rapid City, SD 57709-0677

Mr. Raymond Hillenbrand
777 Ranch
P.O. Box 8303
Rapid City, SD 57709-8303

Field Manager
U.S. Department of Interior
Bureau of Land Management
310 Roundup Street
Belle Fourche, SD 57717-1698

Marshall & Joyce Stiver
8006 Timberline Road
Buckhawk, SD 57718

Kristen K. Franks
106 Gumbo Drive
Box Elder, SD 57719-9487

Dennis Schmidt
HCR 57, Box 2
Buffalo Gap, SD 57722

James and Mary Williams
HC 56, Box 4
Buffalo Gap, SD 57722

Margaret Ballinger
Arrow Hanging B, Inc.
P.O. Box 124
Buffalo Gap, SD 57722-0124

Walter Whitcher
HC 56 Box 13
Buffalo Gap, SD 57722-9717

Ned Westphal
P.O. Box 231
Custer, SD 57730

The Honorable Robert Schilling
Mayor
City of Custer
622 Crook Street
Custer, SD 57730

Mitch Paulson
RR #2
Custer, SD 57730

Ms. Marguerite Cummmum
Director
Custer County Library
447 Crook Street
Suite 4
Custer, SD 57730-1509

Ms. Kim Irwin
Chairwoman
Custer County
Board of Commissioners
Custer County Courthouse
420 Mount Rushmore Road
Custer, SD 57730-1934

Interested Parties - cont.

Mr. Jim Stender
Custer County
Board of Commissioners
Custer County Courthouse
420 Mount Rushmore Road
Custer, SD 57730-1934

Mr. Joe McFarland
Custer County
Board of Commissioners
Custer County Courthouse
420 Mount Rushmore Road
Custer, SD 57730-1934

Herman and Mary Lou Heck
Box 441
715 East Street
Edgemont, SD 57735

Leonard McElhaney
City of Edgemont
P.O. Box A
Edgemont, SD 57735

Craig and Lea Stodart
HCR 59, Box 42
Edgemont, SD 57735

John Koller
Box 715
Edgemont, SD 57735

Barb Bryan
Box 660
Edgemont, SD 57735

Wayne Childers
HC 59, Box 1-A
Edgemont, SD 57735

Kenneth and Ann Bronemann
HCR 59, Box 73
Edgemont, SD 57735

Edgemont Herald
P.O. Box 660
410 2nd Avenue
Edgemont, SD 57735

Franklin Manke
Box 599
Edgemont, SD 57735

Kenneth & Anne Cassens
HC 48, Box 270
Edgemont, SD 57735

Ted and Gail A. Hinesley
P.O. Box 215
Edgemont, SD 57735

Tyler and Cole Yada
HCR 59, Box 42
Edgemont, SD 57735

Pat Hollenbeck
HC 59, Box 5
Edgemont, SD 57735

Mr. Keith Andersen
Andersen Ranch Partnership
P.O. Box 252
Edgemont, SD 57735

Keith and Marie Anderson
Box 252
Edgemont, SD 57735

Ben Hobbs
P.O. Box 157
Edgemont, SD 57735-0157

Ms. Teresa Tracey
Librarian
Edgemont Public Library
P.O. Box 449
Edgemont, SD 57735-0449

John Putnam
HC 59, Box 34
Edgemont, SD 57735-9602

Jim Miller
HC 59, Box 102
Edgemont, SD 57735-9712

Interested Parties - cont.

The Honorable Debra Patterson
Mayor
City of Fairburn
City Hall
P.O. Box 81
Fairburn, SD 57738

Jerry and Bev Austin
Two Heart Bison Ranch
HC 58, Box 12
Fairburn, SD 57738

Earl & Cecilia Brunson
P.O. Box 80
Fairburn, SD 57738-0080

Mr. A. E. Baker
Battle Creek Valley PTP
HCR 89 Box 293
Hermosa, SD 57744

The Honorable Jim Lintz
State Representative
South Dakota State Legislature
HCR 89, Box 50
Hermosa, SD 57744

Doreen Waner
HCR 89, Box 289
Hermosa, SD 57744

Rick Mills
P.O. Box 65
Hermosa, SD 57744

The Honorable Drue Vitter
State Senator
South Dakota State Legislature
P.O. Box 41
Hill City, SD 57745-0041

Mr. Neal Larson
Vice President
Black Hills Institute of Geological
Research, Inc.
P.O. Box 643
217 Main Street
Hill City, SD 57745-0643

Bruce, Linda and Wesley Murdock
Route 1, Box 120
Hot Springs, SD 57747

Don DeVries
Box 612
Hot Springs, SD 57747

Vernon and Carolyn Schnose
HC 52, Box 155
Hot Springs, SD 57747

The Honorable Mike Koehn
State Representative
South Dakota State Legislature
1711 Minnekahta Avenue
Hot Springs, SD 57747

Ms. Sherrill Dryden
County Auditor
Fall River County
Courthouse
906 North River Street
Hot Springs, SD 57747

Lis Hollman
HC 52, Box 108F
Hot Springs, SD 57747

Ms. Peggy Exum
Librarian
Hot Springs Public Library
1543 Baltimore Avenue
Hot Springs, SD 57747

Roger and Elaine Molitor
2035 Jennings Avenue
Hot Springs, SD 57747

Earl Long
HCR Box 139
Hot Springs, SD 57747

KZMX-AM/FM Radio
Wind Cave Road
Hot Springs, SD 57747

Ms. Linda Mcelroy
Hot Springs Star
107 North Chicago Street
Hot Springs, SD 57747-0163

LaRoy Lorenz
HC 52, Box 149
Hot Springs, SD 57747-9606

Interested Parties - cont.

Glen and Deanne Reaser
HC 52
Box 171C2-2
Hot Springs, SD 57747-9626

Ms. Jenifer Sorensen
IES Instructor
Oglala Lakota College
P.O. Box 490
Kyle, SD 57752

Oglala Lakota College
Learning Center
P.O. Box 490
Kyle, SD 57752

Mr. Harley Lux
City of Lead
801 West Main Street
Lead, SD 57754

Wanda Edoff
P.O. Box 302
New Underwood, SD 57761

Neil and Esther Hartman
HC 46, Box 53
Oelrichs, SD 57763-9715

Blaine Morgan
HC 56, Box 70
Oral, SD 57766

Russell Wyatt
HC 56, Box 83
Oral, SD 57766

Steve and Eugenia Neugebauer
HC 56, Box 97G
Oral, SD 57766

Butch & Sue Hoyer
P.O. Box 354
Oral, SD 57766

Jack D. & Gaye Cameron
HC 56 Box 82
Oral, SD 57766

Marge Charbonneau
HC 56, Box 54A
Oral, SD 57766

Luther Stiver
HC 56 Box 84
Oral, SD 57766

Leonard and Kay Benson
HC 56, Box 65A
Oral, SD 57766-9727

Peggy Sanders
HC 56, Box 86
Oral, SD 57766-9751

Mr. Robert Coffey
Superintendent
U.S. Bureau of Indian Affairs
Pine Ridge Agency
P.O. Box 1203
Pine Ridge, SD 57770

Ms. Frieda Iron Cloud
U.S. Bureau of Indian Affairs
Pioneer Agency
P.O. Box 1203
Pioneer, SD 57770

The Honorable Oliver Red Cloud
Chairman
Black Hills Sioux Nation Council
P.O. Box H
Pine Ridge, SD 57770

Ms. Elaine Quiver
Coordinator
Grey Eagle Society
Pine Ridge Elderly Program
P.O. Box F
Pine Ridge, SD 57770

Mr. Robert Clifford
Publisher
Black Hills People's News
P.O. Box 3008
Pine Ridge, SD 57770

Oglala Sioux Tribe
Fifth Members Office
P.O. Box H
Pine Ridge, SD 57770

Interested Parties - cont.

Mr. Harold Salway
President
Oglala Sioux Tribal Council
P.O. Box H
Pine Ridge, SD 57770

Ms. Kim Clausen
Oglala Sioux Tribe
Environmental Office
Box 2008
Pine Ridge, SD 57770

Frank Duncan
P.O. Box 181
Pringle, SD 57773

Carol Arthur
Plum Creek Ranch
HC 48, Box 250
Provo, SD 57774

Flora Stearns
HC 48, Box 265
Provo, SD 57774

Werley Stverak
P.O. Box 68
Quinn, SD 57775

Dale and Chris Molitor
P.O. Box 74
Smithwick, SD 57782

Norwood and Ann Hanson
Box 7
Smithwick, SD 57782

Gary A. Johnson
229 Vermont Street
Spearfish, SD 57783

Mr. Gary Matthews
KBHB Radio
Box 99
Sturgis, SD 57785

Mr. Joel Stephens
Councilman
City of Wall
City Council
Wall City Office
Wall, SD 57790

Norman Geigle
19318 Geigle Road
Wall, SD 57790

Merlin and Betty Crown
P.O. Box 380
Wall, SD 57790

Clay Schaack
23650 Sage Creek Road
Wall, SD 57790

Jonny Winn
Pennington County Courant
P.O. Box 435
Wall, SD 57790

Merle Crown
P.O. Box 392
Wall, SD 57790

Mr. Jim Kitterman
Councilman
City of Wall
City Council
Wall City Office
Wall, SD 57790

Rick Husted
121 LCST 7th Avenue
Wall, SD 57790

Boyd Kitterman
Box 431
Wall, SD 57790

Arnold Johnson
416 6th Avenue
Wall, SD 57790

Rodney Renner
23100 190th Avenue
Wall, SD 57790

Interested Parties - cont.

Larry Eisenbraun
P.O. Box 153
Wall, SD 57790

Mr. Don Kelly
Councilman
City of Wall
City Council
P.O. Box 355
Wall, SD 57790

Mr. James Kjerstad
Commissioner
Pennington County
County Commission
P.O. Box 433
Wall, SD 57790

The Honorable David Hahn
Mayor
City of Wall
Wall City Office
Wall, SD 57790

Keith Bagley
Box 366
Wall, SD 57790

Gordon R. Pederson
Box 312
Wall, SD 57790-0312

Jim Pahl
P.O. Box 412
Wall, SD 57790-0412

Mr. Russell Pahl
Councilman
City of Wall
City Council
Box 419
Wall, SD 57790-0419

Margaret Willey
P.O. Box 39
Wasta, SD 57791

J. B. Soderquist
P.O. Box 106
Wasta, SD 57791

Houston Engineering Company, Inc.
P.O. Box 5054
2505 North University Drive
Fargo, ND 58105

Dennis Potter
P.O. Box 13243
Grand Forks, ND 58208-3243

Mr. Richard LaFramboise
Chairman
Turtle Mountain Band of Chippewa
P.O. Box 900
Belcourt, ND 58316

Turtle Mountain Community College
Library
P.O. Box 340
Belcourt, ND 58316

Ms. Jolene Peltier
Tribal Secretary
Turtle Mountain Band of Chippewa
P.O. Box 900
Belcourt, ND 58316

Ms. Karen Littlewind
Tribal Secretary
Spirit Lake Nation Tribal Council
P.O. Box 359
Fort Totten, ND 58335

Mr. Phillip Longie
Chairperson
Spirit Lake Nation Tribal Council
P.O. Box 359
Fort Totten, ND 58335

Little Hoop Community College
Library
P.O. Box 269
Fort Totten, ND 58335

Dean Messmer
304 East Broadway
Room 343
Bismarck, ND 58501

Richard Nelson
U.S. Bureau of Reclamation
Dakotas Area Office
P.O. Box 1017
304 East Broadway
Bismarck, ND 58502

Ms. Cynthia Mala
Executive Director
North Dakota Indian Affairs Commission
600 East Boulevard Avenue
1 Floor - Judicial Wing
Bismarck, ND 58505-0300

Interested Parties - cont.

Sitting Bull College
Library
RR 1, HC-Box 4
Fort Yates, ND 58538

Mr. Charles Murphy
Chairman
Standing Rock Sioux Tribal Council
P.O. Box D
Fort Yates, ND 58538

Mr. Tim Mentz, Sr.
Tribal Historic Preservation Officer
Standing Rock Sioux Tribe
Tribal Historic Preservation Office
Tribal Planning Office
P.O. Box D
Fort Yates, ND 58538

Mr. Larry Bodin
Superintendent
Bureau of Indian Affairs
Standing Rock Agency
P.O. Box E
Fort Yates, ND 58538

Ms. Elaine McLaughlin
Tribal Secretary
Standing Rock Sioux Tribal Council
P.O. Box D
Fort Yates, ND 58538

Field Manager
U.S. Department of Interior
Bureau of Land Management
2933 Third Avenue West
Dickinson, ND 58601-2619

Mr. Tex Hall
Chairman
Three Affiliated Tribes Business Council
HC 3, Box 2
New Town, ND 58763

Fort Berthold Community College
Library
P.O. Box 490
New Town, ND 58763

Elgin Crows Breast
Director
Three Affiliated Tribes
Cultural Preservation Office
HC 3, Box 2
New Town, ND 58763

Aberdeen Area Tribal Chairmen's

HC 3, Box 2
New Town, ND 58763

Dayton Spotted Bear
Association
Three Affiliated Tribes Business Council
HC 3, Box 2
New Town, ND 58763

Little Big Horn College
Council Secretary Library
1 Forest Lane
Crow Agency, MT 59022

Mr. Clifford Birdingrond
Chairman
Crow Tribal Council
P.O. Box 159
Crow Agency, MT 59022

George Reed, Jr.
Crow Tribal Cultural Resources
P.O. Box 159
Crow Agency, MT 59022

Mr. Gilton Nobel
Secretary
Crow Tribal Council
P.O. Box 159
Crow Agency, MT 59022

Mr. Joseph Walks Along, Sr.
President
Northern Cheyenne Tribal Council
Box 128
Lame Deer, MT 59043

Dull Knife Memorial College
Library
P.O. Box 98
1 College Drive
Lame Deer, MT 59043

Mr. Mark Wandering Medicine
Cultural Preservation Committee
Northern Cheyenne Tribal Council
Box 128
Lame Deer, MT 59043

Ms. Norma Gourneau
Vice-Chairwoman
Northern Cheyenne Tribal Council
Box 128
Lame Deer, MT 59043

Ms. Charlene Evans
Secretary
Northern Cheyenne Tribal Council
Box 128
Lame Deer, MT 59043

Lee Lone Bear
Councilman
Northern Cheyenne Cultural Commission

P.O. Box 78
Lame Deer, MT 59043

Interested Parties - cont.

Daniel Lechefskey
U.S. Bureau of Reclamation
Great Plains Regional Office
P.O. Box 36900
316 North 26th Street
Billings, MT 59101

Mr. Keith Beartusk
Regional Director
U.S. Bureau of Indian Affairs
Rocky Mountain Regional Office
316 North 26th Street
Billings, MT 59101-1362

Montana/Wyoming Tribal Leaders
Council
207 North Broadway
BR-2
Billings, MT 59101-1951

Mr. John Hill, Sr.
Chairman
Medicine Wheel Alliance
Box 23403
Billings, MT 59104-3403

U.S. Department of Interior
Bureau of Land Management (923)
5001 Southgate Drive
P.O. Box 36800
Billings, MT 59107

Dan Lechefskey
U.S. Bureau of Reclamation
Attn GP2100
P.O. Box 36900
Billings, MT 59107-6900

Herald-News
408 Main Street
Wolf Point, MT 59201-1534

Arlyn Headdress
Chairman
Fort Peck Tribes-Assiniboine Sioux
Fort Peck Tribal Executive Board
P.O. Box 1027
Poplar, MT 59255

Regine Belgarde
Secretary
Fort Peck Tribes-Assiniboine Sioux
P.O. Box 1027
Poplar, MT 59255

Fort Peck Community College
Library
P.O. Box 398
Poplar, MT 59255-0398

Miles City Star
13 North 6th Street
Miles City, MT 59301-3101

Mr. Clifford Locke
Legislative Representative
United Transportation Union
Local #486
P.O. Box 1141
Forsythe, MT 59327

State of Montana
Governor's Office of Indian Affairs
State Capitol
Room 202
Helena, MT 59620

Clair Green
3rd Avenue, NE and Badger
White Sulphur Springs, MT 59645

William L. O'Neill, Jr.
19290 Mullan Road
Frenchtown, MT 59834

Mr. Alpha Ames, Jr.
Region Director
U.S. Department of Transportation
Maritime Administration-Great Lakes
Region

2860 South River Road
Suite 185
Des Plaines, IL 60018-2413

Mr. Stephen Culberson
Associate
TAMS Consultants, Inc.
One East Wacker Drive

Suite 1200
Chicago, IL 60601

Mr. Mazin Enwiya
U.S. Environmental Protection Agency
Region 5
B-19J

77 West Jackson Boulevard
Chicago, IL 60604

Ms. Patricia Grant
Federal Energy Regulatory Commission
230 South Dearborn Street
Room 3130
Chicago, IL 60604-1505

Ken Hinterlong
Federal Emergency Management
Agency - Region V
536 S Clark Street
#6
Chicago, IL 60605-1509

Mr. Kevin Pierard
Watersheds & Nonpoint Source
Program
Water Division WW-16J
77 West Jackson Boulevard
Chicago, IL 60690-3590

Interested Parties - cont.

Luhr Brothers, Inc.
P.O. Box 50
Columbia, IL 62236

Wendell Funk
31846 Terry Park Road
Palmyra, IL 62674

Mr. Roger Wiebusch
Commander (OBR)
U.S. Coast Guard
8th District
1222 Spruce Street
St. Louis, MO 63103-2832

Piling Specialties
1460 Woodstone Drive
#1
St. Charles, MO 63340-6867

Bill Bryan
Attorney General
State of Missouri
Supreme Court Building
Jefferson City, MO 65101

Mr. Henry Liu
Director
University of Missouri-Columbia
Capsule Pipeline Research Center
E2421 Engineering Building East
Columbia, MO 65211-2200

J. E. Sheldon
15635 South Apache Street
Olathe, KS 66062

Mr. Eric Andelin
Western Air Maps
9401 Reeds Road
Overland Park, KS 66207-2519

Mr. Dick Rinehart
Black & Beatch
11401 Lamar
Overland Park, KS 66211

Donald & Peggy Althoff
13620 SW Shumway Road
Augusta, KS 67010

Mr. Edwin McCauley
Tribal Secretary
Omaha Tribal Council
P.O. Box 368
Macy, NE 68039

Mr. Elmer Blackbird
Chairman
Omaha Tribal Council
P.O. Box 368
Macy, NE 68039

Little Priest Tribal College
Library
P.O. Box 270
Winnebago, NE 68071

Mr. Kenneth Mallory
Chairman
Winnebago Tribal Council
P.O. Box 687
Winnebago, NE 68071

Louis Houghton
Council Secretary
Winnebago Tribal Council
P.O. Box 687
Winnebago, NE 68071-0687

U.S. Department of the Interior
National Park Service
Midwest Region
1709 Jackson Street
Omaha, NE 68102

Ms. Julie Anderson
Omaha World Herald
1334 Dodge Street
Omaha, NE 68102-1126

U.S. Army Corps of Engineers
CENWO RE-M
215 North 17th Street
Omaha, NE 68102-4978

Mr. Jerry Folkers
U.S. Army Corps of Engineers
Omaha District
215 North 17th Street
Omaha, NE 68102-4978

U.S. Army Corps of Engineers
CENWO ED HC
215 North 17th Street
Omaha, NE 68102-4978

Mr. David Purty
APA Incorporated
9300 Underwood Avenue
Suite 400
Omaha, NE 68114-2400

Interested Parties - cont.

U.S. Army Corps of Engineers
CENWD-MR-ET-O
12565 West Center Road
Omaha, NE 68144-3869

Big River Construction
P.O. Box 277
Nebraska City, NE 68401

Nebraska Commission on Indian Affairs
P.O. Box 94981
6th Floor Capitol
Lincoln, NE 68509

Ms. Terri Hickman
State of Nebraska
Department of Environmental Quality
P.O. Box 98922
Statehouse Street
Lincoln, NE 68509-8922

Mr. Arthur Denny
Chairman
Santee Sioux Tribal Council
Route 2
Niobrara, NE 68760

Mr. Fred LeRoy
Chairman
Ponca Tribe of Nebraska
P.O. Box 288
Niobrara, NE 68760

Nebraska Indian Community College
Library
RR 2
P.O. Box 752
Niobrara, NE 68760

Ms. Jan Colwell
Tribal Secretary
Ponca Tribe of Nebraska
P.O. Box 288
Niobrara, NE 68760

Ms. Lucy Bearing
Tribal Council Recording Secretary
Santee Sioux Tribe of Nebraska
425 Frazier Avenue North
Suite 2
Niobrara, NE 68760-7219

Mr. John Axtell
KQSK-FM
Box 1117
Chadron, NE 69337

KCSR-AM Radio
226 Bordeaux Street
Chadron, NE 69337-2344

Mr. Ronald Cacek
North Platte NRD
P.O. Box 36
Gering, NE 69341

Ms. Betty Tippeconnie
Superintendent
U.S. Bureau of Indian Affairs
Anadarko Agency
P.O. Box 309
Anadarko, OK 73005

Mr. Billy Horse
Chairman
Kiowa Tribe of Oklahoma
P.O. Box 369
Carnegie, OK 73015

Mr. George Daingkau
Kiowa Tribe of Oklahoma
Museum Committee
P.O. Box 369
Carnegie, OK 73015

Ms. Emily Sapepauhoodle
Secretary
Kiowa Tribe of Oklahoma
P.O. Box 369
Carnegie, OK 73015

Mr. Donovan Birdshead
Secretary
Cheyenne-Arapaho Tribes of Oklahoma
P.O. Box 38
Concho, OK 73022

Mr. Joe Big Medicine
Historic Preservation Officer
Cheyenne-Arapaho Tribes of Oklahoma
P.O. Box 38
Concho, OK 73022

Mr. James Pedro
Chairman
Cheyenne-Arapaho Tribes of Oklahoma
P.O. Box 38
Concho, OK 73022

Ms. Barbara Warner
Executive Director
Oklahoma Indian Affairs Commission
4545 North Lincoln Boulevard
Suite 282
Oklahoma City, OK 73105

Lawton Public Library
110 SW 4th Street
Lawton, OK 73501

Interested Parties - cont.

Mr. Johnny Wauqua
Chairman
Comanche Tribe of Oklahoma
P.O. Box 908
Lawton, OK 73502

Mr. Jimmy Arterberry
Tribal Preservation Officer
Comanche Tribe of Oklahoma
HC 32, Box 1720
Lawton, OK 73502

Mr. Thomas Chibitty
Secretary
Comanche Nation
HC 32
Box 1720
Lawton, OK 73502

Mr. Robert Chapman
President
Pawnee Nation of Oklahoma
Pawnee Nation Business Council
P.O. Box 470
Pawnee, OK 74058

Mr. William Howell
Head Chief
Pawnee Tribal Nasharo Council
c/o Pawnee Chief
6th & Illinois
P.O. Drawer 370
Pawnee, OK 74058

Geraldine Howell
Secretary
Pawnee Nation of Oklahoma
P.O. Box 470
Pawnee, OK 74058

KGfY-FM & KSPI-AM/FM Radio
408 East Thomas Avenue
Stillwater, OK 74075-2648

A.C. Wilson
Secretary
Sac & Fox Nation of Oklahoma
Route 2, Box 246
Stroud, OK 74079

Mr. Don Abney
Principal Chief
Sac & Fox Nation of Oklahoma
Route 2, Box 246
Stroud, OK 74079

U.S. Bureau of Indian Affairs
Muskogee Area Office
Federal Building
Muskogee, OK 74401

Tom Collier
Ercon Inc.
13120 Hempstead Road
Houston, TX 77040-6512

Mr. W. Gunst
Senior Vice President
City Public Service
Power Generation and Bulk Power
Sales
145 Navarro
P.O. Box 1771
San Antonio, TX 78296-1771

Jeffrey R. Moser
14271 East Dickinson Drive
#B
Aurora, CO 80014-2331

Mr. Thomas Canter
Western Coal Transportation
Association
4 Meadow Lark Lane
Suite 100
Littleton, CO 80127-5718

Mr. Richard Jones
Bentonite Corporation
410 Seventeenth Street
Suite 800
Denver, CO 80202

Mr. Jim Berkley
U.S. Environmental Protection Agency
8EPR-EP USEPA Region 8
999 18th Street, Suite 500
Denver, CO 80202-2466

Ms. Cindy Cody
EIS Team Leader
U.S. Environmental Protection Agency
Region 8
Mail Code: 8EPR-EP
999 18th Street; Suite 300
Denver, CO 80202-2466

Frederick Muckerman
910 16th Street
Suite 1150
Denver, CO 80202-2943

G&H Production Company, LLC
518 17th Street
#930
Denver, CO 80202-4130

John B. Hamner
776 Milwaukee
Denver, CO 80206

Ms. Misty Varga
Boyle Engineering
165 South Union Boulevard
Suite 200
Lakewood, CO 80228

Interested Parties - cont.

Mary Jennings
U.S. Department of Interior
Fish and Wildlife Service
4000 Morrie Avenue
Cheyenne, WY 82001

The Honorable Michael Enzi
Senator
U.S. Senate
Attn: Ms. Dee Rodekohr
2120 Capitol Avenue, Room 2007
Cheyenne, WY 82001

The Honorable Barbara Cubin
Representative
U.S. House of Representatives
Attn: Katie Legerski
2120 Capitol Avenue, #2015
Cheyenne, WY 82001

Ms Kylene Claar
News Director
KLEN/KING/KOLT Radio
1912 Capitol Avenue
Suite 300
Cheyenne, WY 82001

Mr. Gary Beach
Administrator
State of Wyoming
DEQ - Water Quality Division
122 West 25th Street
Herschler Building, 4-W
Cheyenne, WY 82002

Mr. Stephen Reynolds
Director
State of Wyoming
Office of Lands and Investments
122 West 25th Street
Herschler Building, 3rd Fl. W.
Cheyenne, WY 82002

Mr. Richard Chancellor
Administrator
State of Wyoming
DEQ - Land Quality Division
122 West 25th Street
Herschler Building
Cheyenne, WY 82002

Ms. Wendy Bresehoff
State of Wyoming
Historic Preservation Office
2301 Central Avenue
Barrett Building
Cheyenne, WY 82002

The Honorable Jim Geringer
Governor
State of Wyoming
State Capitol
Cheyenne, WY 82002

State of Wyoming
GFD - Environmental Services
5400 Bishop Boulevard
Cheyenne, WY 82002

Mr. John
State of Wyoming
State Parks and Cultural Resources
2301 Central Avenue
Barrett Building
Cheyenne, WY 82002

Mr. Dan Olson
Director
State of Wyoming
DEQ - Air Quality Division
122 West 25th Street
Herschler Building
Cheyenne, WY 82002

The Honorable Jim Twiford
State Senator
Wyoming State Legislature
213 State Capitol
Cheyenne, WY 82002

Mr. Dennis Hemmer
Director
State of Wyoming
Department of Environmental Quality
122 West 25th Street
Herschler Building
Cheyenne, WY 82002

Mr. Gary Maier
Community Services Manager
Wyoming Indian Affairs Council
Department of Health
2020 Carey Avenue
Suite 509
Cheyenne, WY 82002

Mr. Dave Bryden
State of Wyoming
Department of Transportation
5300 Bishop Boulevard
Cheyenne, WY 82002-

State of Wyoming
Industrial Siting Administration
122 West 25th Street
Herschler 3E
Cheyenne, WY 82002-0001

Lesley Boughton
State Librarian
Wyoming State Library
Department of Administration &
Information
Supreme Court & State Library Building
2301 Capitol Avenue
Cheyenne, WY 82002-0060

Mr. Ron Micheli
Director
State of Wyoming
Department of Agriculture
2219 Carey Avenue
Cheyenne, WY 82002-0100

U.S. Department of Interior
Bureau of Land Management (930)
5353 Yellowstone Road
P.O. Box 1828
Cheyenne, WY 82003

Mr. Sleeter Dover
Director
State of Wyoming
Department of Transportation
5300 Bishop Boulevard
Cheyenne, WY 82003

Interested Parties - cont.

Dennis Curran
Curran & Curran
P.O. Box 164
Cheyenne, WY 82003

Mr. Tim Stark
State of Wyoming
Department of Transportation
5300 Bishop Boulevard
Cheyenne, WY 82003-

Tamara Gertsch
Wyoming State Office 921
U.S. Department of Interior
Bureau of Land Management
P.O. Box 1828
Cheyenne, WY 82003-1828

Mr. Tom Collins
State of Wyoming
GFD - Statewide Habitat Protection

Mr. John Baughman
Director
State of Wyoming
Program

The Honorable Ross Diercks
State Representative
Wyoming State Legislature
Department of Game and Fish 213 State

Capitol
5400 Bishop Boulevard
Cheyenne, WY 82006

5400 Bishop Boulevard
Cheyenne, WY 82006-0001

Cheyenne, WY 82008

U.S. Army Corps of Engineers
2232 Dell Range Boulevard
Suite 210
Cheyenne, WY 82009

State of Wyoming
Emergency Management
5500 Bishop Boulevard
Cheyenne, WY 82009-3320

Ken Hamilton
P.O. Box 1348
Laramie, WY 82070-71

Ms. Kerin Clark
Field Representative
Wyoming Farm Bureau Federation
P.O. Box 1348
Laramie, WY 82070-71

Bob Beck
KUWN-FM Wyoming Public Radio
KUWN-FM Radio
P.O. Box 3984
Laramie, WY 82071

Mr. Lance Cook
State of Wyoming
State Geological Survey
P.O. Box 3008
Laramie, WY 82071-3008

Mr. Keith Cottam
Director
University of Wyoming Libraries
13th & Ivinson
P.O. Box 3334
Laramie, WY 82071-3334

Ms. Patty Myers
Director
Platte County Public Library
904 9th Street
Wheatland, WY 82201-9711

The Honorable James Hageman
State Representative
Wyoming State Legislature
HC 72, Box 340
Fort Laramie, WY 82212

The Honorable Mark Lohr
Mayor
City of Lusk
P.O. Box 390
Lusk, WY 82225

The Honorable Ross Diercks
State Representative
Wyoming State Legislature
P.O. Box 541
Lusk, WY 82225

Chairman
Niobrara Conservation District
P.O. Box 659
Lusk, WY 82225

DuWayne McGee
SR1 Box 158
Lusk, WY 82225

Mr. Richard James
Commissioner
Niobrara County Courthouse
402 Elm Street
P.O. Box 1238
Lusk, WY 82225

Mr. Richard Ladwig
Commissioner
Niobrara County Courthouse
402 Elm Street
P.O. Box 1238
Lusk, WY 82225

Interested Parties - cont.

Ms. Debbie Sturman
Director
Niobrara County Library
425 South Main Street
P.O. Box 510
Lusk, WY 82225-0510

Lewis Landkamer
Box 659
Lusk, WY 82225-0659

Samuel Carroll
Chairman
Goshen County Board of
Commissioners
P.O. Box 160
Torrington, WY 82240-0160

RT Communication, Incorporated
130 South 9th Street
Worland, WY 82401-3434

Ms. Nancy Riskowsky
Freelance Writer
Tri-State Livestock News
331 Road 6RT
Cody, WY 82414

Francis Brown
Chairman
Medicine Wheel Coalition on Sacred
Sites
Box 601
Riverton, WY 82501

Mr. Joe Sova
News Director
KTRZ-FM Radio
P.O. Box 808
Riverton, WY 82501-0808

Fremont County Library System
Riverton Branch
1330 West Park Street
Riverton, WY 82501-3249

Honorable Anthony Addison, Sr.
Chairman
Northern Arapaho
Arapaho Business Committee
P.O. Box 217
Fort Washakie, WY 82514

Haman Wise
Eastern Shoshone Tribe
Cultural Resource Office
Box 766
106 Sinclair Spur
Fort Washakie, WY 82514

Mr. John Washakie
Chairman
Shoshone Business Committee
P.O. Box 217
Fort Washakie, WY 82514

Mr. Nelson White
Councilman - Northern Arapaho
Wind River Reservation
P.O. Box 396
Fort Washakie, WY 82514

Ms. Susan Johnston
Secretary
Northern Arapaho
P.O. Box 396
Fort Washakie, WY 82514

Mr. Perry Baker
Superintendent
U.S. Bureau of Indian Affairs
Wind River Agency
Fort Washakie, WY 82514

Barbara Mireau
Secretary
Eastern Shoshone Tribe
P.O. Box 538
Fort Washakie, WY 82514

Mr. Patrick Moss
Northern Arapaho Tribe
P.O. Box 396
Fort Washakie, WY 82514-

Mr. Bob Luce
State of Wyoming
GFD -Nongame Program
Lander Regional Office
260 Buena Vista
Lander, WY 82520

Mr. Ray Price
Fremont County Planning Department
450 North 2nd Street
Room 360
Lander, WY 82520

Project Leader
U.S. Department of Interior
Fish and Wildlife Service
170 North 1st
Lander, WY 82520

Wyoming Outdoor Council
262 Lincoln Street
Lander, WY 82520

Fremont County Library System
Lander Main Branch
451 North 2nd Street
Lander, WY 82520-2316

Interested Parties - cont.

Bobbi Brown
c/o U.S. Senator Craig Thomas
2201 Federal Building
Casper, WY 82601

Bob Ugland
Wyoming Business Council
Mineral, Energy, & Transportation
300 S. Wolcott
Suite 200
Casper, WY 82601

The Honorable Barbara Cubin
Representative
U.S. House of Representatives
100 East B Street
Casper, WY 82601-1962

Mr. Jeff Tollefson
Casper Star Tribune
P.O. Box 80
Casper, WY 82602-

Ms. Lesley Boughton
Director
Natrona County Public Library
307 East 2nd Street
Casper, WY 82602-

Mr. Daryl Lutz
Regional Wildlife Management
Coordinator
State of Wyoming
GFD
3030 Energy Lane
Suite 100
Casper, WY 82604

Field Manager
U.S. Department of Interior
Bureau of Land Management
2987 Porpsector Drive
Casper, WY 82604

Mr. Al Conder
Regional Fish Supervisor
State of Wyoming
GFD
3030 Energy Lane
Suite 100
Casper, WY 82604

Jean C. Freeman
2814 East 3rd Street
Casper, WY 82609

Wayne and Joanne Neumiller
950 Stafford
Casper, WY 82609

The Honorable Kenny Taylor
Mayor
City of Douglas
101 North 4th Street
Douglas, WY 82633

Frank and Leslie Eathorne
2661 Highway 59
Douglas, WY 82633

Earl and Jewell Reed
884 Steinle Road
Douglas, WY 82633

Mr. Bart Kroger
Wildlife Biologist
State of Wyoming
GFD
1078 Riverbend Drive
Douglas, WY 82633

Ms. Vickie Goodwin
PRBRO
Box 1178
Douglas, WY 82633

Mr. Johnie Pickinpaugh
Chairman
Converse County Conservation District
Fiddleback Ranch CRM
1954 East Richards
Suite 8
Douglas, WY 82633

Ms. Karen Hopkins
Director
Converse County Library
300 Walnut
Douglas, WY 82633

Ms. Wendy Schmitzer
U.S. Forest Service
2250 East Richards
Douglas, WY 82633

Wayne and Georgia Riehle
3097 Walker Creek Road
Douglas, WY 82633

Bob Stoddard
222 Highway 59
Douglas, WY 82633

J. Patrick Hand, P.C.
P.O. Drawer 49
327 E Center Street, Suite 100
Douglas, WY 82633-0049

Interested Parties - cont.

Ms. Jeanie Wright
News Director
The Douglas Budget
P.O. Box 109
Douglas, WY 82633-0109

Thunder Basin Grazing Association
P.O. Box 136
Douglas, WY 82633-0136

KKTY AM & FM Radio
112 North 2nd Street
Douglas, WY 82633-0212

Donald and Velma Steckley
1212 Smylie Road
Douglas, WY 82633-9140

Gordon and Tammy Delyea
2020 Highway 59
Douglas, WY 82633-9724

Don and Betty Pellatz
1031 Steinle Road
Douglas, WY 82633-9738

The Honorable Jim Anderson
State Representative
Wyoming State Legislature
P.O. Box 1448
Glenrock, WY 82637

Mr. Larry Madsen
Black Hills Bentonite
P.O. Box 9
Mills, WY 82644-0009

Peter & Fonda Vorpahl
P.O. Box 176
Newcastle, WY 82701

Mr. Bill Carson
U.S. Department of Interior
Bureau of Land Management
1101 Washington Boulevard
Newcastle, WY 82701

Vernon and Anna Simmons
2951 Highway 116 South
Newcastle, WY 82701

Helen Wright
1327 Morrissey Road
Newcastle, WY 82701

Sammy Sewell
609 Bruce Road
Newcastle, WY 82701

Mr. Tom Mullen
News Letter Journal
P.O. Box 40
Newcastle, WY 82701

Commissioner
Martin Tysdal
24498 U.S. Highway 85
Newcastle, WY 82701

Councilman
Todd Quigley
306 Stockade Avenue
Newcastle, WY 82701

Councilman
Rick Pillen
109 West Main
Newcastle, WY 82701

Councilwoman
Blanch Cox
22 West Hill
Newcastle, WY 82701

Councilwoman
Annette Hawk
Box 955
230 West Winthrop
Newcastle, WY 82701

Councilman
Ed Wagoner
102 Bonnie Brae Avenue
Newcastle, WY 82701

Terry and Nicky Groenewold
155 Sears Road
Newcastle, WY 82701

Interested Parties - cont.

Marc & Tamala Tracy
833 Piney Creek Road
Newcastle, WY 82701

Clyde Bayne
520 West Main
P.O. Box 896
Newcastle, WY 82701

Commissioner
Ted Ertman
Ad Pro
921 South Summit
Newcastle, WY 82701

Councilwoman
Annie Mullen
P.O. Box 40
Newcastle, WY 82701

Mr. Greg Anderson
Wildlife Biologist
State of Wyoming
GFD
116 Highland
Newcastle, WY 82701

James Bunch
P.O. Box 982
Newcastle, WY 82701

Mr. & Mrs. Glenn Hanson
2360 Cheyenne River Road
Route 3
Newcastle, WY 82701

Director
Weston County Public Library
23 West Main Street
Newcastle, WY 82701

Chris R. Christensen
1502 Cheyenne River Road
Newcastle, WY 82701

County Commissioner
Lewis M. McCoy
Box 836
Newcastle, WY 82701

L. R. and Carolyn Johnson
2360 South Cheyenne River Road
Newcastle, WY 82701

Rick and Ann Wehri
753 Morrissey Road
Newcastle, WY 82701

Councilman
Greg James
503 Cambria
Newcastle, WY 82701

Commissioner
Alan Todd
841 Raven Creek Road
Newcastle, WY 82701

Fred and Clara Wilson
19946 South Highway 85
Newcastle, WY 82701

Greg James
10 West Warwick
Newcastle, WY 82701

The Honorable Mike Mills
Mayor
City of Newcastle
10 West Warwick
Newcastle, WY 82701

Nancy Moore
KASL-AM
227 South Seneca Avenue
Newcastle, WY 82701-2820

Daniel & Joyce Tracy
795 Reno Road
newcastle, WY 82701-9514

County Commissioner
Ted Elliott
86 Elliott Road
Newcastle, WY 82701-9538

Maxine Ripley
Mid-States Coalition for Progress
453 State Highway 111
Aladdin, WY 82710-9716

Interested Parties - cont.

The Honorable Marlene Simons
State Representative
Wyoming State Legislature
5480 Highway 14
Windy Acres
Beulah, WY 82712

Mr. Bryn Stewart
Campbell County Commissioners Office
500 South Gillette Avenue
Suite 212
Gillette, WY 82716

Paul and Ruby Stuart
6559 Clareton Highway
Gillette, WY 82716

Guy W. Edwards Trust
796 Lawver Road
Gillette, WY 82716

Patricia Litton
5925 Highway 59
#1
Gillette, WY 82716

The Honorable Nick Deegan
State Representative
Wyoming State Legislature
510 South Gurley Avenue
Gillette, WY 82716

The Honorable Frank Latta
Mayor
City of Gillette
201 East 5th Street
Gillette, WY 82716

The Honorable Michael Enzi
Senator
U.S. Senate
Attn: Robin Bailey
510 South Gillette Avenue
Gillette, WY 82716-4204

Mr. Olin Oedekoven
Wildlife Biologist
State of Wyoming
GFD
P.O. Box 3571
Gillette, WY 82717

Mr. Darryl Maunder
Jacobs Ranch Coal Company
505 South Gillette Avenue
Caller Box 3013
Gillette, WY 82717

Jim and Irene Stuart
639 Hilight Road
Gillette, WY 82718

Ms. Marcia Wright
Director
Campbell County Public Library
2101 4J Road
Gillette, WY 82718

The Edwards
347 Lawver Road
Gillette, WY 82718

Raymond & Daisy Dennis
580 Little Missouri Road
Hulett, WY 82720

Larry W. Goodson
P.O. Box 1271
Sundance, WY 82729

Powder River Energy
P.O. Box 930
Sundance, WY 82729

Upton Branch Library
722 4th Street
P.O. Box 605
Upton, WY 82730

Weston County Gazette
P.O. Box 526
723 2nd Street
Upton, WY 82730

C. L. & Lydia Childs
P.O. Box 557
Upton, WY 82730

The Honorable Bill Barton
State Senator
Wyoming State Legislature
P.O. Box 799
Upton, WY 82730

Wright Branch Library
Latigo Hills Shopping Mall
Wright, WY 82732

Interested Parties - cont.

Karl Bertagnole
110 Richfield Court
Wright, WY 82732

Connie Andersen
Box 344
Wright, WY 82732-0344

Kevin Lind
Powder River Basin Resource Council
23 North Scott, Suite 19
Sheridan, WY 82801

Mr. Bob McDowell
Regional Fish Supervisor
State of Wyoming
GFD
P.O. Box 6249
700 Valley View Drive
Sheridan, WY 82801

The Honorable Craig Thomas
Senator
U.S. Senate
40 South Main Street
Sheridan, WY 82801

Mr. Kirk Koepsel
Sierra Club
23 North Scott, Suite 27
Sheridan, WY 82801

Field Manager
U.S. Department of Interior
Bureau of Land Management
1425 Fort Street
Buffalo, WY 82834-

Chairman
Gordon Park
212 Toponce Drive
Evanston, WY 82930

Dave Becker
P.O. Box 22
Boise, ID 83729

Mary Helen Bruce
3001 East Dahlia Drive
Phoenix, AZ 85032

H. J. Borgmeyer
6770 North Longfellow Drive
Tucson, AZ 85718-2420

Mr. Bob Borgmeyer
Rodales Ranches Inc.
6770 North Longfellow Drive
Tucson, AZ 85718-2420

Ms. Susan Bigelow
Economic Development
P.O. Box 3948
Gillette, WY 86747

Herbert Stoltenberg
P.O. Box 22
Cedar Crest, NM 87008

Scott Kelderhouse
1180 Town Center Drive
Las Vegas, NV 89134

Phil Gehner
TWR Environmental Safety Systems
1180 Town Center Drive
Las Vegas, NV 89134

L. M. Fitzgetald
P.O. Box 3194
Santa Monica, CA 90408

Mr. & Mrs. Marshall Anderson
1779 Tanglewood Drive
San Luis Obispo, CA 93401

Ms. Bonnie Nixon
Public Affairs Management
101 The Embarcadero
Suite 210
San Francisco, CA 94105

Mr. James Stark
AICP
Mid-States Coalition for Progress
124 Country Club Drive
San Francisco, CA 94132-1106

Mr. David Doolaege
Water Structures Unlimited
P.O. Box 206
Carliotta, CA 95528

Interested Parties - cont.

Kochenbach
U.S. Army Corps of Engineers
CNEWD NP ET OR
P.O. Box 2870
Portland, OR 97208-2870

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