



EO-1396
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***SURFACE TRANSPORTATION BOARD
Washington, DC 20423***

Section of Environmental Analysis

January 29, 2010

Herb Jones, Director
Government Affairs
Dakota, Minnesota & Eastern Railroad Corporation
140 North Phillips Avenue
Sioux Falls, SD 57104

**Re: STB Finance Docket No. 33407, Dakota, Minnesota & Eastern
Railroad Corporation's Construction into the Powder River Basin**

Dear Mr. Jones,

Thank you for your recent letter seeking confirmation from the Surface Transportation Board (STB), that the requirements of the Section 106 of the National Historic Preservation Act have been met for some segments of the Dakota, Minnesota & Eastern Railroad Corporation's (DM&E) Powder River Basin Expansion Project (Project). Your request is consistent with the Project Programmatic Agreement, which provides for phased approval of construction in areas determined to have no historic properties.¹

In response to your request, I directed Mr. Randy Withrow of Louis Berger to review the information you appended to your letter, consisting of maps of the Project corridor showing the location of unexamined corridor segments, lists of cultural sites located within the Project's construction right-of-way (ROW), and lists of Project segments considered to be negative for historic properties. Mr. Withrow has cross-

¹ In addition to the provision for phased approval of construction in areas with no historic properties, the PA also set forth the following conditions that must be met in order for the Board to allow construction to proceed:

1. That full review by appropriate Federal agencies, appropriate Tribal representatives and appropriate SHPOs has been completed;
2. That areas are negative for historic properties;
3. That report(s) have been accepted by the STB, appropriate Federal agencies with jurisdiction, appropriate SHPO(s), and appropriate Tribal representatives;
4. That the appropriate SHPOs and appropriate Tribal representatives concur with the decision to allow construction; and
5. That DM&E obtain permits or approvals as required.

checked this information with our records of the archaeological survey work completed to date and the status of those survey report findings following reviews by the consulting parties.

Based on our review of the information you submitted, we conclude that the Section 106 requirements have been met for an estimated 75.7 % of the Project corridor. The result of our review is summarized in the table shown below. More detailed information identifying the precise location and status of the associated project segments has been posted on Louis Berger's file transfer protocol web site.

Current Estimate of Areas Cleared for Section 106 Purposes

Clearance Categories	Rehab MN	Rehab SD	PRC SD	New Build SD	New Build WY	Total Miles	%
No Historic Properties Present	186.35	199.21	95.63	73.00	90.54	644.73	75.7
Eligible or Unevaluated Properties	28.78	10.84	10.87	16.39	9.10	75.98	8.9
Additional Survey/Testing Needed	57.83	0.00	0.00	54.36	18.63	130.82	15.4
Totals	272.96	210.05	106.50	143.75	118.27	851.53	100.0

The figures shown above, including those regarding the "No Historic Properties Present," category could change subject to the result of Section 106 consulting party review of your buried sites proposal.² As you know, this proposal is currently being revised in response to comments received from Federal agencies and Tribal representatives, but has yet to be reviewed by the State Historic Preservation Offices in South Dakota and Wyoming.

As a reminder, DM&E must also comply with other environmental conditions outlined in STB's February 6, 2006 Decision before we can provide you with final construction approval. Final approval is also conditioned on the result of consulting party review of the historic district treatment plan³ and your buried sites proposal.

Thank you for all your hard work in advancing the Section 106 review in this Project. If you have any questions regarding this matter, please feel free to contact me or Catherine Glidden of my staff at (202) 245-0293 or by email at gliddenc@stb.dot.gov.

Sincerely,

Victoria Rutson, Chief
Section of Environmental Analysis

² *Proposal for the Identification and Evaluation of Deeply Buried Archaeological Sites Along the DM&W Powder River Basin Expansion Project New Build Segment in Wyoming and South Dakota*

³ *Final Historic District Treatment Plan for the Winona & Saint Peter/Dakota Central Railroad District*

