



EO-1254

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SURFACE TRANSPORTATION BOARD
395 E Street, SW
Washington, DC 20423-0001
Section of Environmental Analysis

May 21, 2009

Paige Hoskinson Olson
Review and Compliance Coordinator
South Dakota State Historic Preservation Office
900 Governors Drive
Pierre, South Dakota 57501-2217

RE: STB Finance Docket No.33407, Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin (Ref. SD SHPO Project # 080515042F; LBG-SD3)

Dear Ms. Hoskinson Olson:

I am writing you in response to your June 10, 2008 letter requesting additional information regarding the July 2001 survey report prepared by Burns & McDonnell entitled: *Level I and II Cultural Resource Survey and Site Testing and Evaluation for 317 Miles of Railroad Reconstruction From the Minnesota Border to Wall, South Dakota*. Since receiving your letter, the Surface Transportation Board (STB) has held numerous meetings with representatives from the Dakota, Minnesota & Eastern Railroad (DM&E) regarding some of the questions and topics raised in your letter, several of which had far-reaching implications for other ongoing survey efforts. As you know, many of these topics were addressed during a meeting with representatives from your office and other consulting parties in Sioux Falls on December 2, 2008. We are providing you with our formal response at this time in the interest of facilitating your review of this report and several related report addenda that are being submitted for your review at this time under separate cover.

In your letter, you stated that you were unable to comment on the effect of the proposed undertaking without additional information. We are providing the following information in response to your comments, questions and requests.

Comment #1: *Given that the report was prepared in July of 2001, explain if an updated record search was completed for the project area of potential effects, and if not why?*

- STB Response: DM&E reports that its contractors completed supplemental record searches in September 2006 and again in July 2007. Updated results were incorporated into the project's GIS mapping system.

Comment #2: Explain how all of the National Register Criteria were applied to all unevaluated and newly recorded sites. Sites containing unevaluated resources outside the project APE should be considered unevaluated for listing in the National Register of Historic Places.

- STB Response: To assist with your review, we have revised the site list enclosed with our May 15, 2008 submittal. Enclosed with this letter are two site lists: the first lists sites that have been evaluated against all eligibility criteria and the second lists sites that remain unevaluated under one or more eligibility criteria. The eligibility status of those sites that remain unevaluated will be determined by STB in accordance with the enclosed "Procedural Clarification For Resolving the Eligibility of Unevaluated Sites" document reviewed and accepted by consulting parties at the December 2, 2008 project meeting. This clarification statement describes how the eligibility criteria, particularly criteria A and D, will be applied to sites located within or partially within the project APE that remain unevaluated. Those sites located outside the project APE are included in the unevaluated list and will remain unevaluated by STB.

Comment #3: Explain how the sites located within the project APE will be impacted by the project.

- STB Response: Additional information regarding the assessment of project impacts to historic properties is provided in the enclosed clarification statement entitled: "Procedural Clarification for Assessing the Project's Direct and Indirect Impacts to Historic Properties". This document explains how and when project impacts to affected historic properties will be assessed. Generally speaking, construction activities will vary throughout the project APE depending on engineering and design requirements. The segment of the project corridor described in the 2001 Burns & McDonnell survey report, i.e., the segment that extends from the Minnesota border to Wall, encompasses DM&E's existing alignment. Construction activities within this segment will focus on rehabilitation of existing track. In most areas, construction will involve removal and replacement of rails and ties, replacement of some bridges, installation of culverts, and overall engineering improvements within the railroad right-of-way (ROW) that involve minimal or no new ground disturbance. Most of these activities will be conducted from the rail, requiring few staging areas or need to extend activities beyond the ROW. Precise estimates of construction needs and impacts at any particular location will become evident as engineering drawings are refined. Examples of detailed design information were shared with consulting parties at the December 2nd meeting. Pending your comment on our determinations of site eligibility and receipt of final design information from DM&E, we are assuming that any eligible sites located within the project APE will be subject to adverse effects. DM&E will look for ways to minimize adverse effects to these sites through avoidance or site burial strategies that will be incorporated into treatment plans. Treatment plans will be subject to review under the terms of the PA, and will specify

feasible mitigation measures responsive to the historic values of the properties and that can be accomplished without jeopardizing the rehabilitation engineering, safety, and performance requirements.

Comment #4: Provide a determination of effect for National Register listed site 39HU0005.

- *STB Response:* This information was inadvertently not provided in our original submittal. A determination of effect for Site 38HU0005 is included in the list of evaluated sites enclosed with this letter.

Comment #5: Five sites were identified as isolated finds in the table entitled "List of Identified Resources with Determination of NRHP Eligibility and Effect". These sites should be represented by the assigned Smithsonian Number. In addition, our records indicate that site 39HU0052 is listed on the National Register of Historic Places and site 39HU0097 is considered eligible for listing.

- *STB Response:* This information has been revised and corrected in the enclosed list of evaluated sites.

Comment #6: Provide comments submitted by other consulting parties regarding identification of historic properties and any other concerns about the impacts on those properties.

- *STB Response:* STB has not received any written comments on this report from other consulting parties. The original July 2000 draft of this report was distributed to the following cooperating agencies, tribes, and tribal organization for review and comment on August 7, 2000: U.S. Army Corps of Engineers- Omaha District; U.S. Army Corps of Engineers-St. Paul District; Bureau of Land Management; Bureau of Reclamation; U.S. Forest Service; Environmental Protection Agency, Regions 5 & 8; U.S. Coast Guard; DM&E Railroad Corporation; Rosebud Sioux Tribe; Lower Brule Sioux Tribe; Standing Rock Sioux Tribe; Crow Creek Lakota Tribe; Cheyenne River Lakota Tribe; Upper Sioux Indian Community; Medicine Wheel Coalition; Gray Eagle Society; and the Minnesota Indian Affairs Council. No written comments were received from any of the above agencies, tribes or tribal organizations following distribution of the draft report. On September 25, 2000, Burns & McDonnell submitted the draft to the South Dakota State Historic Preservation Office (SHPO) for its review. The SHPO provided written comments to the report on December 22, 2000. SHPO concurred with the survey methods presented in the report, but asked that formal recommendations of eligibility and effect be provided for all resources identified within the project's Area of Potential Effect. The report was subsequently revised to reflect the SHPO's recommendations and was resent to SHPO on August 27, 2001. No record of a final comment on this report appears to exist. On November 9, 2007, the STB re-circulated the 2001 survey report to consulting parties in accordance with the terms of the Programmatic Agreement for this project (which was developed after the initial round of reviews in 2000-2001). No written comments were forthcoming from consulting parties in response to STB's November 2007 request for comment.

Comment #7: Provide larger maps of the project APE including all known sites. The report indicates that 20 sites have been identified outside the project APE. Provide the approximate distance of each site from the project area.

- *STB Response:* A complete set of detailed maps showing the location of the project alignment and associated cultural sites was prepared and forwarded to you by DM&E on July 22, 2008 (see attached transmittal letter). The approximate distance separating sites located outside the project APE from the limits of the direct effects APE are included in the attached site list for unevaluated sites.

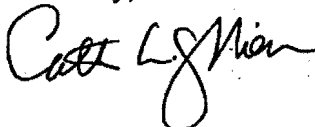
Comment #8: Explain what happened to the material collected by Burns & McDonnell.

- *STB Response:* A record of the chain of custody for these materials is enclosed with this letter (see attached documentation). DM&E took possession of the collections in 2007 and they are currently housed in a secure location at the DM&E headquarters in Sioux Falls, SD. The collections will be transferred to the State Archaeological Research Center in Rapid City, SD prior to the completion of the project.

In addition to the preceding items, we noted several significant typographic errors in the July 2001 report that we would like to bring to your attention. These are identified in the enclosed errata sheet (see attachment).

If you have any further questions or comments regarding any of the above information, please feel free to contact me by telephone at 202-245-0293 or by email (Catherine.Glidden@stb.dot.gov). You may also contact our Third-Party Contractor, Randy Withrow at 319-373-3043 (rwithrow@louisberger.com). We look forward to hearing from you.

Sincerely,



Catherine Glidden
Section of Environmental Analysis

Cc: Herb Jones, DM&E
Randy Withrow, LBG

Attachments: Procedural Clarification For Resolving the Eligibility of Unevaluated Sites
Procedural Clarification for Assessing the Project's Direct and Indirect
Impacts to Historic Properties
Letter from Herb Jones (DM&E) to Paige Hoskinson-Olson (SHPO), July
22, 2008
Chain of Custody Documentation for Collected Site Materials
Errata Sheet
List of Evaluated Sites
List of Unevaluated Sites

ERRATA SHEET
May 20, 2009

Level I and II Cultural Resource Survey and Site Testing and Evaluation for 317 Miles of Railroad Reconstruction From the Minnesota Border to Wall, South Dakota. Report Prepared by Burns & McDonnell, July 2001 for the Surface Transportation Board

We noted the following typographical errors in our review of the 2001 Burns and MacDonnell (SD3) report. They are listed below.

Table of Contents:

- p. TC-7 6.10 SITE 39HD76 (Vayland) is incorrectly identified as SITE 39HU76
p. TC-11 6.37 SITE 39HK78 (WN-1). Site 39HK78 is incorrectly identified as isolated findspot (WN-1). WN-1 is properly assigned to 39JN11 (see Section 6.41).

p. TC-13 8.1.9 Site 39HU52 is incorrectly identified as Site 39HU57.

Chapter 6:

- p. 6-182 6.32 Site 39HD37. 39HD37 is incorrectly labeled on site map as 39HB37.

p. 6-193 6.37 SITE 39HK78 (WN-1). Site 39HK78 is incorrectly identified as isolated findspot (WN-1). WN-1 is properly assigned to 39JN11.

Chapter 8:

- p. 8-4 Table 8-1. Previously Recorded Sites and Association to Project Area, South Dakota.
39HU52 is incorrectly identified as 39HU57
39HD76 is incorrectly identified as 39HU76

p. 8-5 Table 8-2. Summary Evaluations of Previously Recorded Sites, South Dakota.
39HU52 is incorrectly identified as 39HU57
39HD76 is incorrectly identified as 39HU76

p. 8-8 8.1.9 Site 39HU52. Site 39HU52 is incorrectly identified as Site 39HU57

**COMPILED LIST OF EVALUATED PROPERTIES
POWDER RIVER BASIN EXPANSION PROJECT
SOUTH DAKOTA REHABILITATION SEGMENT**

Site Number	MP	Report Code	Property Description and Location within Direct Impact APE	NRHP Eligibility Determination ¹	Likely Impact to Site/Effect
39BE0129	376.1	SD3, p. 159	Wolsey Station (310 artifacts) Private Land, 100% within APE	Eligible Criterion D	Direct Physical Impact/ Adverse Effect
39BE0130	387.7	SD3, p. 154	Wessington Station (No artifacts) Private Land, 100% within APE	Not Eligible	Direct Physical Impact/ No Effect
39BK0104	285.8	SD3, p. 6-166	Aurora Station (No artifacts collected) Private Land, 100% within APE	Not Eligible	Direct Physical Impact/ No Effect
39HD0076	393.1	SD3, p. 6-68	Vayland Station (No artifacts collected) Private Land, 100% within APE	Not Eligible	Direct Physical Impact/ No Effect
39HK0076	551.0	SD3, p. 6-95	Powell Station (322 artifacts) Private Land, 100% Within APE	Eligible Criterion D	Direct Physical Impact/ Adverse Effect
39HK0077	541.0	SD3, p. 6-83	Nowlin Station (1,227 artifacts) Private Land, 100% within APE	Eligible Criterion D	Direct Physical Impact/ Adverse Effect
39HK0078	564.7	SD3, p. 6-193	Prehistoric Lithic Scatter (2 artifacts) Private Land, 100% within APE	Not Eligible	Direct Physical Impact/ No Effect
39HK0082	542.2	SD3, p. 6-204	Isolated Find (1 flake) Private Land, 100% within APE	Isolated Finds Not Eligible	Direct Physical Impact/ No Effect
39HU0005	474.6	SD3, p. 6-17	Prehistoric Village (Mush Creek Site) Private Land, 30% within APE	National Register Listed Criterion D	Direct Physical Impact/ Adverse Effect
39HU0006	474.1	SD3, p. 8-12	Prehistoric Village (Arzberger Site) Private Land, 0% within APE 1,300 Feet Outside of APE	National Historic Landmark (7/16/1964)	No Direct Impact/ No Effect
39HU0007	474.1	SD3, p. 6-8	Prehistoric Village (McClure Site) Private Land, 10% within APE	National Register Listed Criterion D	Direct Physical Impact/ Adverse Effect
39HU0052	477.7 – 478.0	SD3, p. 6-7	Military Fort (Fort Sully 1, 1863-1866) DM&E RR Land, 10% within APE	National Register Listed Eligible Criteria A & D Portion of Site Within APE is Considered Non-contributing	Direct Physical Impact/ No Effect

¹ All National Register criteria were applied.

Site Number	MP	Report Code	Property Description and Location within Direct Impact APE	NRHP Eligibility Determination ¹	Likely Impact to Site/Effect
39HU0066	462.7	SD3, p.8-14	Stone Alignment and "Several" Petroforms Private Land, 0% within APE 1,500 Feet Outside of APE	National Register Listed 2/23/1984	No Direct Impact/ No Effect
39HU0097	476.7	SD3, p. 6-60	Prehistoric Village (Little Pumpkin Site) Human Remains in Area A Shovel Test Private Land, 20% within APE	National Register Listed Criterion D	Direct Physical Impact/ Adverse Effect
39HU0202	468.0	SD3, p. 8-13	Prehistoric Village (Medicine Knoll Site) Private Land, 10% within APE	National Register Listed Criterion D (Fort George Creek Archaeological District)	Direct Physical Impact/ Adverse Effect
39HU0262	461.13	SD3, p 6-71	Canning Station (No artifacts) Private Land, 100% within APE	Not Eligible	Direct Physical Impact/ No Effect
39HU0285	440.0	SD3, p. 6-132	Harrold Station (No artifacts) Private Land, 100% within APE	Not Eligible	Direct Physical Impact/ No Effect
39HU0286	455.43	SD3, p. 6-184	Prehistoric Campsite (6 artifacts) Private Land, 60% within APE	Not Eligible	Direct Physical Impact/ No Effect
39JN0010	512.9	SD3, p. 6-126	Van Metre Station (No artifacts collected) Private Land, 100% within APE	Not Eligible	Direct Physical Impact/ No Effect
39JN0011	521.4	SD3, p. 6-201	Isolated Find (1 flake) Private Land, 100% within APE	Isolated Finds Not Eligible	Direct Physical Impact/ No Effect
39KB0012	344.7	SD3, p. 6-170	Iroquois Station (No artifacts) Private Land, 100% within APE	Not Eligible	Direct Physical Impact/ No Effect
39KB0015	313.7	SD3, p. 6-197	Hetland Station (No artifacts collected) Private Land, 100% within APE	Eligible Criterion D	Direct Physical Impact/ Adverse Effect
39ST0295	493.56	SD3, p. 107	Teton Station (75 artifacts) Private Land, 100% within APE	Eligible Criterion D	Direct Physical Impact/ Adverse Effect
39ST0302	489.27	SD3, p. 6-203	Isolated Find (1 flake) Private Land, 100% within APE	Isolated Finds Not Eligible	Direct Physical Impact/ No Effect
39ST0303	506.93	SD3, p. 6-204	Isolated Find (1 flake) Private Land, 100% within APE	Isolated Finds Not Eligible	Direct Physical Impact/ No Effect
39ST0304	504.75	SD3, p. 6-203	Isolated Find (1 flake) Private Land, 100% within APE	Isolated Finds Not Eligible	Direct Physical Impact/ No Effect

**COMPILED LIST OF UNEVALUATED SITES
POWDER RIVER BASIN EXPANSION PROJECT
SOUTH DAKOTA REHABILITATION SEGMENT**

Property	MP	Report Code	Property Description	Consultant's Eligibility Recommendation	STB's Recommendation
39HD0037	413.25	SD3	Ree Heights Station (No artifacts) Private Land, 100% within APE	Not Eligible (No Shovel Tests Excavated to Evaluate Subsurface Potential)	Unevaluated for Criterion D
39HD0074	393.7	SD3	Homestead Private Land, 0% within APE 50 Feet Outside of APE	Unevaluated	Unevaluated
39HE0021	435.0	SD3	Stone Cairn (No artifacts) Private Land, 50% within APE	Unevaluated Criteria A & D Native American Consultation	Unevaluated for Criteria A & D
39HE0022	419.62	SD3	Stone Cairn (No artifacts) Private Land, 90% within APE	Unevaluated Criteria A & D Native American Consultation	Unevaluated for Criteria A & D
39HE0023	433.2	SD3	Holabird Station (No artifacts) Private Land, 100% within APE	Not Eligible (No Shovel Tests Excavated to Evaluate Subsurface Potential)	Unevaluated for Criterion D
39HE0024	425.25	SD3	Highmore Station (No artifacts) Private Land, 100% within APE	Not Eligible (No Shovel Tests Excavated to Evaluate Subsurface Potential)	Unevaluated for Criterion D
39HK0061	544.8	SD3	Habitation Private Land, 0% within APE 450 Feet Outside of APE	Unevaluated	Unevaluated
39HK0079	533.2	SD3	Midland Station (No artifacts) Private Land, 100% within APE	Not Eligible (No Shovel Tests Excavated to Evaluate Subsurface Potential)	Unevaluated for Criterion D
39HU0077	482.2	SD3	Prehistoric Village (38 artifacts) Private Land, 10% within APE	Not Eligible (No Investigations Conducted to Evaluate Site Area Outside APE)	Unevaluated for Criterion D
39HU0114	467.8	SD3	Village/Habitation Private Land, 0% within APE 500 Feet Outside of APE	Unevaluated	Unevaluated

Property	MP	Report Code	Property Description	Consultant's Eligibility Recommendation	STB's Recommendation
39HU0130	470.2	SD3	Habitation Private Land, 0% within APE 1,400 Feet Outside of APE	Unevaluated	Unevaluated
39HU0132	470.5	SD3	Village Private Land, 0% within APE 1,350 Feet Outside of APE	Unevaluated	Unevaluated
39HU0133	472.6	SD3	Lithic Scatter Private Land, 15% within APE	Unevaluated (Site was originally considered outside APE and was not investigated)	Unevaluated for Criterion D
39HU0134	475.3	SD3	Habitation Private Land, 25% within APE	Unevaluated (Site was originally considered outside APE and was not investigated)	Unevaluated for Criterion D
39HU0135	476.0	SD3	Habitation Private Land, 15% within APE	Unevaluated (Site was originally considered outside APE and was not investigated)	Unevaluated for Criterion D
39HU0191	475.0	SD3	Stone Circle Private Land, 0% within APE 1,050 Feet Outside of APE	Unevaluated	Unevaluated
39HU0208	468.1	SD3	Prehistoric Village Private Land, 0% within APE 600 Feet Outside of APE	Unevaluated	Unevaluated
39HU0209	468.0	SD3	Cemetery (Sioux/Euroamerican) Private Land, 0% within APE 500 Feet Outside of APE	Unevaluated	Unevaluated
39HU0267	453.5	SD3	Not Reported Private Land, 0% within APE 1,200 Feet Outside of APE	Unevaluated	Unevaluated
39HU0283	437.1	SD3	Stone Cairn (No artifacts) Private Land, 60% within APE	Unevaluated Criteria A & D Native American Consultation	Unevaluated for Criteria A & D
39HU0284	437.0	SD3	Stone Cairn (No artifacts) Private Land, 50% within APE	Unevaluated Criteria A & D Native American Consultation	Unevaluated for Criteria A & D
39HU0287	476.2	SD3	Stone Cairn (No artifacts) Private Land, 100% within APE	Unevaluated Criteria A & D Native American Consultation	Unevaluated for Criteria A & D

Property	MP	Report Code	Property Description	Consultant's Eligibility Recommendation	STB's Recommendation
39HU0288	452.25	SD3	Blunt Station (No artifacts) Private Land, 100% within APE	Not Eligible (No Shovel Tests Excavated to Evaluate Subsurface Potential)	Unevaluated for Criterion D
39HU0289	262.95	SD3	Stone Cairn (No artifacts) Private Land, 100% within APE	Unevaluated Criteria A & D Native American Consultation	Unevaluated for Criteria A & D
39JK0207	574.0	SD3	Lithic Scatter Private Land, 0% within APE 300 Feet Outside of APE	Unevaluated	Unevaluated
39JK0239	573.5	SD3	Cottonwood Station (No artifacts) Private Land, 100% within APE	Not Eligible (No Shovel Tests Excavated to Evaluate Subsurface Potential)	Unevaluated for Criterion D
39JN0004	523.0	SD3	Campsite Private Land, 0% within APE 20 Feet Outside of APE	Unevaluated	Unevaluated
39JN0008	513.2	SD3	Lithic Scatter Private Land, 0% within APE 100 Feet Outside of APE	Unevaluated	Unevaluated
39JN0009	523.5	SD3	Capa Station (no artifacts collected) Private Land, 100% Within APE	Not Eligible (No Testing Conducted to Evaluate Potential for Subsurface Deposits)	Unevaluated for Criterion D
39KB0013	329.5	SD3	De Smet Station (No artifacts) Private Land, 100% within APE	Not Eligible (No Shovel Tests Excavated to Evaluate Subsurface Potential)	Unevaluated for Criterion D
39KB0014	320.85	SD3	Lake Preston Station (No artifacts) Private Land, 100% within APE	Not Eligible (No Shovel Tests Excavated to Evaluate Subsurface Potential)	Unevaluated for Criterion D
39PN1952	590.75	SD3	Wall Station (No artifacts) Private Land, 100% within APE	Not Eligible (No Shovel Tests Excavated to Evaluate Subsurface Potential)	Unevaluated for Criterion D
39ST0085	496.1	SD3	Lithic Scatter Private Land, 0% within APE 350 Feet Outside of APE	Unevaluated	Unevaluated

Property	MP	Report Code	Property Description	Consultant's Eligibility Recommendation	STB's Recommendation
39ST0086	495.9	SD3	Prehistoric Lithic Scatter Unknown Owner, 0% within APE 350 Feet Outside of APE	Unevaluated	Unevaluated
39ST0296	503.2	SD3	Wendte Station (no artifacts collected) Private Land, 100% Within APE	Not Eligible (No Testing Conducted to Evaluate Potential for Subsurface Deposits)	Unevaluated for Criterion D

PROCEDURAL CLARIFICATION FOR RESOLVING THE ELIGIBILITY OF UNEVALUATED SITES

Issue

The Surface Transportation Board (STB) and the Dakota, Minnesota and Eastern Railroad (DM&E) have developed the following plan/clarification statement to help resolve and establish the National Register eligibility of archaeological sites located within the project's Area of Potential Effect (APE). This plan is intended to provide clear guidance to project participants regarding procedures for applying all evaluation criteria (as defined at 36 CFR 60.4) to previously unevaluated and newly recorded sites located within the APE.

Evaluating Significance to Tribes and Information Potential

A number of archaeological sites located within the project's APE currently remain unevaluated with regard to National Register eligibility. Many of these remain unevaluated due to the need for additional input from tribes regarding the association of suspected traditional religious and cultural values that could qualify these sites for listing in the National Register under Criterion "A". A majority of the sites in this group include surface features such as stone circles and/or rock cairns which were consistently identified as potentially sensitive areas by tribal monitors who accompanied the archaeological survey teams. In most cases, tribal monitors recommended against archaeological testing at these locations pending further consultation.

Most of the sites identified as sensitive areas by tribal monitors also remain unevaluated with respect to establishing their archaeological information potential under Criterion "D" due to restrictions imposed by STB on archaeological testing pending resolution of Criterion "A" eligibility. In a few instances, DM&E's contractors were able to offer recommendations in their survey reports regarding the eligibility of properties under Criterion "D" based on surface assessments and other observations which indicated no possibility that any subsurface cultural remains (or important scientific information) could exist. Consequently, in these rare instances, properties are recommended "not eligible" under Criterion "D", but remain unevaluated under Criterion "A" pending tribal input.

In their survey reports, DM&E's contractors referenced the comments of tribal monitors as part of their description of unevaluated sites to alert tribal reviewers of their presence so they could either notify STB if further field work (e.g., site visits by elders and traditional practitioners) might be necessary to determine whether any were of traditional religious or cultural importance, or to issue their comments to STB where information contained in the reports was sufficient to determine their traditional cultural values. To date, STB has received very few comments from tribes regarding the traditional significance of sites described in these reports; however, tribal representatives have provided STB with general information that emphasizes the traditional cultural

the second phase focused on archaeological testing for the purpose of resolving Criterion "D" eligibility.

5. The results of traditional cultural and archaeological evaluations under Criterion "A" and Criterion "D" will be provided for review by consulting parties as addenda to the original archaeological survey reports in accordance with the terms of the PA (PA, Stipulation A.3.4). Some information regarding the basis for Criterion A eligibility may be withheld from these addenda in accordance with the confidentiality provisions of the PA (PA, Stipulation I).
6. Unevaluated sites eventually determined eligible under Criterion "A", or other criteria, as properties of traditional religious and cultural significance will be subject to consultation with relevant tribes to develop appropriate treatments to mitigate any potential impacts to such sites.
7. Tribes will continue to have opportunities throughout the PA process to issue comments and eligibility recommendations on properties described in future survey reports. Tribes may also offer information relevant to the reassessment of any property identified at any time during the implementation of the PA process.

Evaluating Sites Located Partially Within the Construction Right-of-Way

Sites situated partially within the project's construction right-of-way (ROW) and partially outside the ROW also remain "unevaluated" in the archaeological survey reports. This is due in part to lack of access to private property located adjacent to the existing or construction ROW or landowner refusal to allow subsurface testing. In such cases, National Register evaluations recommended in reports have been, and will continue to be, based on the best available information, including archival research, historic maps, aerial photography, and archaeological testing within the ROW to an appropriate level. In most cases, DM&E's consultants have not provided specific recommendations regarding National Register eligibility due to their inability to characterize or evaluate the site as a whole; instead, the portions of sites which extend into the ROW have been described as either "contributing" or "non-contributing" to indicate whether the archaeological deposits that extend into the ROW retain important information potential regardless of the overall eligibility of the partially accessible site.

Recommendations

1. DM&E and its consultants will attempt to gather sufficient information to fully evaluate the National Register eligibility of properties that extend outside the ROW. This will be accomplished "...to the extent that access from landowners is available" (PA Stipulation A.2). In instances where DM&E's consultants are unable to gain access to the entire site for purposes of evaluating National Register eligibility, and where DM&E is unable to avoid the site during construction, DM&E's consultants will attempt to estimate the boundaries of the site from within the ROW and will ensure that the unavoidable portion of the site

PROCEDURAL CLARIFICATION FOR ASSESSING THE PROJECT'S DIRECT AND INDIRECT IMPACTS TO HISTORIC PROPERTIES

Issue

The Surface Transportation Board (STB) and the Dakota, Minnesota and Eastern Railroad (DM&E) propose the following plan/clarification for assessing direct (ground disturbance) and indirect effects (noise, visual, vibration) of the project on properties listed on or eligible for listing on the National Register of Historic Places (National Register).

Indirect Effects

The Environmental Impact Statement (EIS) prepared by STB's Section of Environmental Analysis (SEA) for the DM&E Project included information regarding potential noise and vibration impacts to historic properties within the project area. In the Draft EIS, SEA determined that "structures within 100 feet of a new rail line of the type contemplated as part of this project could experience some damage by project-related vibration." In the Final EIS, however, SEA concluded that "...structures would likely need to be within 50 feet of the rail line to potentially be damaged by rail vibration (Final EIS, Volume 1, Chapter 3 at page 3-65)."

SEA also assessed potential audible impacts to the project area in the EIS. SEA concluded that audible impacts would not be adverse. However, STB included Conditions 86-96 in its 2006 Decision to assure that if noise levels increase due to increased haul tonnage levels, mitigation measures would be imposed to address any potential adverse effects including consultations with the appropriate State Historic Preservation Officer (SHPOs) for impacts that could affect historic properties. In Condition 95:¹

...Should noise mitigation be required at locations identified as containing structures that are potentially eligible for listing on the National Register of Historic Places, Applicant shall consult with the appropriate State Historic Preservation Officer to assess effects and implement appropriate mitigation measures...

The Wyoming (WY) and South Dakota (SD) SHPOs have requested that STB assess potential visual or audible adverse effects on historic properties extending three miles on either side of the construction corridor or New Build Segment. The WY SHPO asked that STB conduct a file search to locate all properties within the 6-mile corridor currently listed on the National Register while the SD SHPO requested an inventory of properties that are both listed and considered eligible for listing on the National Register. Preliminary site file searches conducted by DM&E indicate that approximately 35 sites are located within the six-mile corridor encompassing the New Build Segment in WY and SD.

¹ See 2006 Decision at page 39.



July 22, 2008

Ms. Paige Hoskinson-Olson
South Dakota State Historical Society
900 Governors Drive
Pierre, South Dakota 57501-2217

RE: DM&E Powder River Basin Expansion Project Maps

Dear Ms. Hoskinson-Olson:

The enclosed maps depict the location of the proposed DM&E alignment and cultural sites in South Dakota. These are offered to you for your use as you continue to review reports for this project. Site locations and numbers are inclusive of the file search results and properties encountered during the Powder River Basin Expansion Project surveys. The maps do not show the boundaries of proposed yards, sidings or ancillary facilities, which undergo refinement as the design efforts are completed. These will be provided on appropriate maps in the reports generated for these specific locations. I hope you find the set of maps useful. If you have any questions or need any assistance please let me know.

Sincerely,

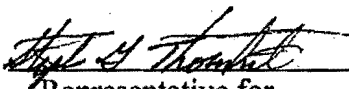
A handwritten signature in black ink, appearing to read "Herb M. Jones".

Herb M. Jones
Director, Government Affairs

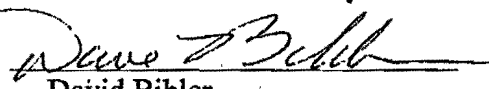
CHAIN OF CUSTODY

The signatories to this form agree that a transfer and assignment of artifacts collected by Burns and McDonnell, who recovered them while conducting the archaeological work for the Dakota, Minnesota and Eastern Railroad's Powder River Basin Project, to David Bibler of the Louis Berger Group serving as a third party contractor for the Surface Transportation Board, has taken place for the item(s) listed on the attached document(s). Mr. Bibler will transport the artifacts into the possession of the Dakota, Minnesota, and Eastern Railroad. Upon receipt of the artifacts, the Dakota, Minnesota and Eastern Railroad will sign this Chain of Custody form.

If available, any artifact inventory or artifact logging documentation will accompany the artifacts.


Representative for
Burns and McDonnell

TO:


David Bibler
Louis Berger Group

DATE: 27 June 2007


David Bibler
Louis Berger Group

TO:


Herb Jones
Dakota, Minnesota, and Eastern RR

DATE: July 10, 2007

Unsealed Artifacts Boxes Received by DM&E on July 10, 2007

Box Label

- 1) Site: 39 BE 129 Wolsey
- 2) Site: 39 HU 5
- 3) Site: 39 HU 5 Flot
- 4) Project: DMERR MN (Project # 97-304-4-031)
- 5) Project: HU-77; Teton-C
Site: Powell HK 76; Cleared: HK 78; Final Bags: HU 286
- 6) Site: 39 HU 97
- 7) Project: 39 HK 77; Site: Now In
- 8) Site: 39 HU 5&7 – Photoed Artifacts