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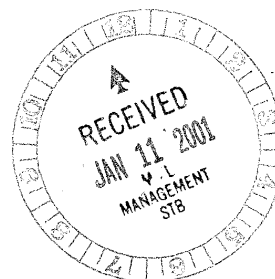
January 2, 2001

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

ENTERED
Office of the Secretary

JAN 12 2001

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Public Record



RE: Surface Transportation Board's Draft Environmental Impact Statement (EIS) for the Dakota, Minnesota & Eastern (DM&E) Railroad Corporation's Proposed Rail Line Construction into Wyoming's Powder River Basin (Docket No. 33407).

Dear Ms. Rutson,

The following comments are provided by Reid Nelson and Maynard Nelson in our capacity as private citizens concerned about the preliminary findings of this document. For the record, Maynard Nelson is a current resident of Brown County, Minnesota, where he owns a farm and residence within the proposed Middle East Staging and Marshalling Yard (Option B). Reid Nelson, his son, grew up in this area and currently lives in Gallup, New Mexico. We have collectively agreed to have Reid Nelson serve as the spokesman for us. Please direct any necessary communication to him.

We are deeply concerned about a number of specific and general findings with the draft EIS and wish to express our deep concern and objection to these findings. These concerns, general and specific, are provided below.

Introduction

Maynard Nelson received a brief letter in the fall of 2000 stating that the draft EIS was available for review. Prior to that letter, no specific notification was made by any party (including DM&E) to Mr. Nelson. In response to this notification, we have reviewed this document and find numerous troubling inconsistencies and failures made by the Section of Environmental Analysis (SEA). Our analysis brings us to the conclusion that this project should not be built and that STB should choose the No-Action alternative. Our beliefs are based on the following findings.

Specific Comments

Executive Summary, Figure ES-2: This figure states that Public Scoping Meetings were held in April - July, 1998. Neither of us were aware of these meetings; no specific notification was made to Maynard Nelson, the owner of many acres of land that the project proposes to wipe out. DM&E's and/or STB's failure to make far reaching contact with potentially affected land owners is disappointing and in apparent contradiction with the legal responsibility to do so.

Executive Summary, Page ES-3, first paragraph and Page ES-22, first paragraph: The primary potential "environmental" benefit is identified by the SEA as "enhanc(ed) safety." It should be clarified in the

document that safety is a matter of importance to the *human* environment and not the *natural* environment. Without making such a distinction, the public is misled into believing that the project has broader benefits than it does. Many members of the public might not realize that the project has no *natural* environmental benefit if such a distinction is not made.

Executive Summary, Page ES-6, second paragraph: We believe that the Board would have been obligated to make an environmental analysis of the non-280 mile portion in any case since significant new staging yards are proposed in areas where only upgraded line exists. These staging yards will clearly have a substantial, adverse affect on the environment.

Executive Summary, Page ES-14, ES.5: We believe the SEA has failed to properly notify the public regarding this proposed undertaking. We have spoken with several surrounding neighbors living in the vicinity of Middle East Staging and Marshalling Yard (Option B); none of these residents were ever made aware of any public meeting until Fall 2000.

Executive Summary, Page ES-15, ES.5.2: If this is the case, then why did none of the residents in our area of residency know about this undertaking until this fall?

Executive Summary, Page ES-17, first bulleted paragraph: We disagree that any in-depth cultural resource survey for archaeological and/or historic resources or study of potential impacts to land use (including farms) was conducted, as is required by 36 CFR Part 800.4 (b)(1). If the subject Programmatic Agreement has modified this responsibility, we have not been notified of such. We find specific fault with the apparently cursory study of cultural resources in the area of the Middle East Staging and Marshalling Yard (Option B). Specifically, we know of no pedestrian survey for archaeological resources being conducted in the proposed expanded right-of-way associated with the Middle East Yard (Option B). We base this conclusion on the fact that this land is under the ownership of Maynard Nelson and that he was never contacted by any cultural resource manager seeking access to his land in order to facilitate a survey. Further, we believe that any thorough and effective cultural resource inventory should also include interviews with local residents and historians in order to identify possible Traditional Cultural Properties and/or historic landscapes. This lack of effort is troubling when considering that it is likely that an unidentified Traditional Cultural Property (the Minnesota River), an historic landscape/Traditional Cultural Property (the original town site of New Ulm founded by German immigrants in the early 1800s), and an historic structure (the Raymond Keane building) all exist either within or immediately adjacent to the Staging Yard. Other historic properties are known by local residents to also exist directly within and adjacent to the Yard. Unfortunately, the EIS does not list these properties and, to our knowledge, STB is attempting to make alternative selections with an incomplete understanding of such resources. Further, we find specific and repeated failure on STB's part to consult with the public regarding cultural resources and/or their treatment, as is required by 36 CFR Part 800.2 (d). We also believe that we, and others in the area, should have been consulted pursuant to 36 CFR Part 800.4 (a)(3). Accordingly, we recommend that STB not choose any alternative for this staging yard or any other part of this project without performing a more thorough assessment of the resources that may be impacted by this project. We also believe that any Programmatic Agreement that has been entered into by STB regarding this project should preserve the basic responsibilities outlined above.

Executive Summary, Page ES-18, ES.7: Why were significant long-term adverse environmental impacts to Traditional Cultural Properties (TCPs) and Aesthetic/visual resources not listed for Minnesota? It is possible that, in the vicinity of the Middle East Staging and Marshalling Yard (Option B) alone, two TCPs exist. Surely others exist within the project area in Minnesota. Likewise, the placement of this

staging area will clearly adversely effect the visual and aesthetic qualities of the Minnesota River valley.

Executive Summary, Page ES-20, last paragraph, second to last sentence: SEA's statement to the effect that rail line crossings would "provide opportunities for vehicle/train and train/pedestrian accidents" seems to contradict earlier statements to the effect that this project would have a safety *benefit*. If in fact an increased number of such accidents is predicted to occur, then it is misleading to claim a safety benefit.

Executive Summary, Page ES-22, first paragraph: We believe the socioeconomic benefits of this project are minimal and should be portrayed as such. Most permanent employment increases will occur only in Wyoming and spending on local goods and services will occur only for the short duration of project construction and even then only in isolated communities.

Executive Summary, Page ES-22, ES.8.1: We believe that STB's analysis of the No-Action alternative is biased and too heavily based on information provided by a single source which cannot in any way be objective - DM&E. STB and the public are lead to believe that the current railroad system will effectively disintegrate (our words not theirs) without the development of this project. If they are a truly "consumer oriented" company, this amounts to a coercive threat. Simultaneously, SEA concludes that the No-Action alternative will result in significant adverse impacts to the human and natural environment; however, in order to conclude this, SEA must buy into the coercive threats of DM&E and conclude that the decay of that rail line is inevitable and that the public must make a sacrifice in order to keep that from happening. We believe that DM&E should not be the only provider of rail shipping for southern Minnesota; if they are rejected in their application for this project, then perhaps another company will buy their line and be good stewards of it (i.e. maintain it and keep it safe without massive expansion). The same market that is causing DM&E to make this request may also provide a more reasonable alternative to it.

Executive Summary, Page ES-35, Table ES-2: We believe that SEA's preliminary conclusion that Option B is preferable for the Middle East Yard is unjustified. The conclusion that impacts to Minneopa State Park would be serious and difficult to mitigate is perplexing since the Option A Yard *is not slated to go in the park*. Rather, it is our understanding that Yard A would go *next to* the park in an area where Minneopa officials can only claim interest but not actual ownership. Further, since Yard A is further from the more sensitive riverine environment that Yard B lies within, we believe that the impacts to the environment would be significantly less for Option A than Option B. Accordingly, if the No-Action alternative is not selected, we believe the Middle East Yard should be built in the Option A Minneopa location.

Executive Summary, Page ES-47, ES.9: It is significant to note that SEA recognizes that deferred maintenance has left the existing rail in poor condition. By obvious extension, this means that the current safety problems, which are substantially related to poor maintenance, are also likely the fault of the company that did not maintain the tracks in the first place (DM&E). Accordingly, we believe that DM&E was and is responsible for this poor record and the subsequent safety problems. We are concerned that DM&E has shown itself to be a poor steward of public resources and that such poor stewardship may be repeated on any new track it builds. As stated earlier, the public should not have to make a sacrifice (e.g. accepting increased damage to their environment associated with the proposed project) so that DM&E can remedy its past failures.

Executive Summary, Page ES-49, middle paragraph: We believe this first alternative, the No-Action alternative, is the best alternative for this project. The selection of this alternative would effectively

eliminate the serious new adverse impacts to the environment associated with so much new construction while still allowing DM&E to upgrade the current rail within its existing right-of-way. Such an upgrade could also serve the purpose of improving grain shipping on this line. Additionally, two separate other companies would still be shipping coal out of the Powder River Basin even if DM&E was not doing so. In our opinion, this would satisfactorily protect the coal market.

Executive Summary, Page ES-50, first full paragraph: We disagree with SEA's conclusion that the Action alternative for the upgrade portion of this project is preferable. Clearly even the upgrade alone will create new and profound adverse impacts to air quality, ground water, wetlands, cultural resources, business and farm owners, and nearby residents. Given that SEA acknowledges that the increased rail traffic associated with the upgrade would partially detract from the general safety of the upgraded line, we believe that the benefits of the upgrade in terms of safety would be marginal at best. Certainly these marginal safety benefits do not outweigh the substantial detriments we note above. Accordingly, we cannot understand or agree with SEA's determination and urge them to change it.

Executive Summary, Page ES-63, 64; ES.9.4.1: We disagree with the conclusion that impacts to lands that Minneopa Park wishes to expand into are any more serious than the impacts to 109.4 acres of prime farm land and 14.2 acres of wetland associated with Option B. In fact, we believe them to be less significant. The public already has its park at Minneopa; the development of adjacent lands has not been sufficiently demonstrated to be detrimental to their continued enjoyment of that park. On the other hand, the public and local and regional economies do depend on the production of a crop from the 109.4 acres of farm land scheduled to be destroyed under Option B. Likewise, the subject acres of wetlands (14.2 as opposed to 3.7 for Option A) contain and safeguard sources of water, wildlife, and aesthetic qualities that the public also enjoys and benefits from.

Executive Summary, Page ES-72, 73; ES.10.4: As stated earlier, we believe that the public in general and affected residents in particular have not been adequately contacted or consulted with by DM&E or SEA. It is stated that SEA encouraged DM&E to "*communicate with concerned residents* and affected communities" and use their input to develop mitigation alternatives. No such contact with Maynard Nelson, a resident living within the Middle East Staging Yard (Option B) who stands to lose well over 100 acres of land as well as his residence, was ever made. Considering that only a few such staging yards are proposed and that DM&E did not contact the one land owner who stands to lose the most, we find it deplorable that such contact was not made. Further, we believe that such critical failures support a conclusion of STB choosing the No-Action alternative.

Executive Summary, Page ES-87, No. 33: We find this list to be incomplete. Should the project go forward, we believe the Applicant should also be responsible for applying the Land Use Mitigation Policy and Plan to situations concerning the displacement *homes and residences*, as well as *businesses* that depend on the use of the land.

Executive Summary, Page ES-96, No. 75: The Minnesota River valley, particularly the area around New Ulm, Minnesota, is a significant habitat for Bald Eagles, a federally protected species. Many Bald Eagles winter in the area and feed on local food sources. Accordingly, any plan to study nesting areas without taking into account significant non-nesting activities such as feeding would be incomplete.

Executive Summary, Page ES-102, es.14.12: Nos. 99 and 100 indicate that the Applicant must comply with the Programmatic Agreement presumably entered into with the Minnesota State Historic Preservation Office and the Advisory Council on Historic Preservation as well as the Memorandum of

Agreement with local tribes. While this may provide for agreed upon treatment measures for resources deemed eligible for nomination to the National Register pursuant to the National Historic Preservation Act (NHPA) of 1966 as amended, it does nothing to obligate the applicant to comply with the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 or the Archaeological Resource Protection Act (ARPA) of 1979. Since Programmatic Agreements are a tool only of NHPA, they cannot establish restrictions under NAGPRA or ARPA. Therefore, we find this omission to be troubling. We urge the SEA to incorporate language obligating the Applicant to comply with NAGPRA and ARPA.

General Comments

We believe that the greatest impact of DM&E's project to Minnesotans would be felt by New Ulm and possibly one other southern Minnesota community where they propose to construct rail staging yards. To date, several affected communities and local governments have opposed the project. Why? Each have their unique reasons, but two recurring themes arise. First, the need for such an expansion is marginal at best. Two other major railroads already bring coal out of the Powder River Basin to markets in the east. A third is proposed not because the coal is not reaching starving markets but because big businesses are seeking new ways to compete with one another. To be clear, we believe that competition is good *but the expenses of such competition should not outweigh the benefits*. Second, it is clear that such an expansion will have a major detrimental affect on the environment, local landowners, and the quality of life for all residents living close to the project.

What does DM&E offer to offset these negatives? First, they suggest that circa 300 new jobs will be generated by the project and that it will also bring in the temporary economic benefit of workers spending money on food and lodging during the two to three year period it would be under construction. Second, DM&E suggests that grain haulers will benefit. We believe the generation of only 300 jobs for a project of this size is minimal in comparison to the adverse environmental costs of the project. Regarding the suggestion that grain haulers will benefit, we are left starving for more, independent data. To our knowledge, no *independent* analysis of the condition and needs of the transportation infrastructure that farmers depend on to haul grain has been conducted. We are left only with unsubstantiated claims by a biased party (DM&E) that an upgrade to this system is needed, that it must come in the form of rail improvements, and that there is no other viable alternative. We have more faith that the market place would remedy this problem than DM&E apparently does.

Conclusion

In the end analysis, the negatives of this project far outweigh the benefits. For us and others in the New Ulm, Minnesota, area, they would be nearly disastrous. Few, if any, jobs would be generated locally. While DM&E claims the rail will be safer, the EIS actually indicates that significant accidents and fatalities are still likely to occur in areas where residents are attempting to cross this busy corridor. Ironically, it is at least possible that the meager number of new non-rail jobs created by the expansion would be more than offset by the number of people killed while crossing this busy track. Several local residences, businesses and farms would be effectively decimated. Wetlands would be damaged, water and air would be polluted, cultural resources would be destroyed, wildlife would be displaced, a scenic rural river valley would become a noisy freight yard, and the peace of one part of rural New Ulm and the Minnesota River valley would forever be destroyed. We are troubled that such a project would even be considered in such a sensitive ecological area as the Minnesota River valley.

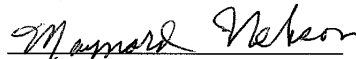
It is our belief that the communities of southern Minnesota in general and New Ulm specifically are being asked to sacrifice their quality of life, the safety of their residents, and the health of their environment so that a private corporation can cut itself a slice of Wyoming's coal market. Since no national interest, economic or otherwise, is at stake, such a heavy sacrifice is unwarranted. The introduction of a high speed rail corridor through the area and the construction of a rail yard near Maynard Nelson's farm would substantially degrade these qualities and leave little or nothing in return. To reiterate, we oppose both the construction of a rail yard near New Ulm and the project in general. Moreover, we insist that, if the project is to go on, DM&E make a good faith effort (that has been totally lacking to date) to consult with us in accordance with the law regarding any future decisions made on any portion of the project that may be of concern to us. The absence of such an effort is troubling and illegal.

We appreciate the opportunity to comment on this EIS. *Please direct any responses, questions, or requests for clarification to Reid Nelson at the address and telephone number provided below.*
Thank you.

Sincerely,



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