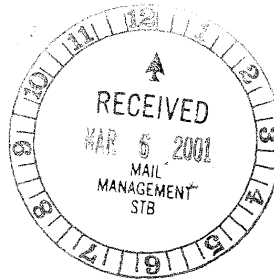


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HC56 Box 43
Oral, SD 57766
February 15, 2001

Office of the Secretary
Case Control Unit
Finance Docket #33407
Surface Transportation Board
1925 K. Street NW
Washington, DC 20423-0001



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Office of the Secretary
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Part of
Public Record

Dear Ms. Rutson:

Enclosed are the original and 10 copies of comments on the Executive Summary of the DEIS for DM&E's proposal to construct into the Powder River Basin.

This DEIS contains much inaccurate information, outdated information, and repetitious information designed to overwhelm the reader with voluminous material and no substance. There are serious violations of NEPA law in the preparation of this DEIS. Section 1502.1 of NEPA code states that "Agencies shall not commit resources prejudicing selection of alternatives before making a final decision." The entire DEIS is biased in favor of the PRB expansion with every consideration given to what DM&E wants. The SEA has already decided the Alternative C is the preferred alternative and refuting information pointing to other alternatives is downplayed as unimportant. The conclusions in many cases do not follow the information presented. NEPA (Section 1502.1) states that "Environmental Impact Statements shall serve as a means of assessing the environmental impact of the proposed agency actions, rather than justifying decisions already made." This DEIS is one long litany of justifying Alternative C.

I urge you to withdraw this incomplete DEIS, do the proper, unbiased studies, and reissue the DEIS. My preference is the No-Build and I am sure with pertinent and correct information, this will also be your preference.

Sincerely,

A handwritten signature in cursive script that reads "Paulene Staben".

Paulene Staben

COMMENTS ON EXECUTIVE SUMMARY

Pauline Staher

Page ES-5

DM&E also proposes to rebuild and upgrade approximately 597.8 miles of rail line along its existing system.

There is no proposal to upgrade the line between Colony, WY and Chadron, NE or from Rapid City to Wasta. This fails to fulfill one of the two purposes of the project; to provide safe, reliable, and efficient service to existing shippers. How many shippers along the Colony line will be left without adequate service (Names and Numbers please) and what will be the financial effects to them and to the State of SD for road repair and increased traffic. (Dollar figures, please)

Page ES-6

The Draft EIS evaluates the environmental effects of both DM&E Expansion Project and reasonable and feasible alternatives to the proposal.

The STB identified a number of alternatives using existing rail corridors. The DEIS does not evaluate these alternatives at all. It appears the D alternatives through Nebraska were discarded simply on DM&E's say-so. Is information from DM&E, the corporation that will make the most profit by going the shortest distance, a reliable source to base any decisions on? The above statement is untrue. The SEA did not evaluate the environmental effects of reasonable and feasible alternatives. DM&E did!

Page ES-14

It is also unlikely that DM&E would upgrade its existing rail line because, according to DM&E, the No-Action alternative would not provide it with the financial resources needed to reconstruct its existing system.

Where is your analysis of the financial resources of DM&E to prove, by an unbiased analyst, that DM&E does not have the financial resources to upgrade its existing system? To take the word of the applicant in this case is NOT allowable. I expect an analysis of current financial resources of DM&E to be available and the analysis of an unbiased party as to their potential to upgrade with the No-Action alternative. It may show that DM&E has been directing its resources elsewhere and allowing its line to become unsafe simply to justify this project.

Why have you not addressed the possibility of using Railroad Rehabilitation and Improvement Financing Program (RRIF) money to reconstruct DM&E's existing system? What are the requirements for a railroad to qualify for this money? Since this money is available to other than Class I carriers, it would seem DM&E could upgrade its existing line without the PRB extension and would thus remain a Class II railroad. Is DM&E currently in the application process for this money? If this federal money is available to only other than Class I carriers, would DM&E then be ineligible to receive this money since it is seeking to upgrade to a Class I carrier? Please consider that DM&E CAN upgrade existing line to serve existing shippers with this Federal money and approve the No-Action Alternative.

Page ES-14

Interested persons and agencies were invited to participate in the scoping process by attending these meetings, reviewing the draft scope of study for the EIS, and....

Those people on the WG Flat Alternative near Oral did not have the opportunity to participate because they did not know they were affected until after scoping had taken place and then only if DM&E made contact with them. The STB NEVER contacted them nor did the environmental review team. This is a clear violation of the NEPA process. Meetings should have been held to inform those people of the route and the process, and consultation is required by NEPA.

Page ES-15

SEA conducted extensive public outreach programs... These included meetings and consultations.

Not on the WG Flat route.

Page ES-16

Therefore additional meetings and consultations were held with a number of individuals and groups, including the following:

Please identify the dates and times of those additional meetings.

Page ES-17

SEA evaluated potential impacts for levels, or tiers, of projected rail operations to account for anticipated growth in train traffic...: 20 million tons annually; 50 million tons; and 100 million tons.

The Economic Impacts provided by DM&E and referenced numerous times in the DEIS(Ex 4.3.16.3) are for 40MNT and 100MNT. Please provide the ACUTAL AND CURRENT figures for 20MNT and 50MNT.

Page ES-20

Many farms and ranches would be crossed, resulting in inconveniences... During rail operations, farms and ranches would be inconvenienced..

The use of the word inconvenienced is particularly offensive to me. Destroyed is the proper word to use here. The whole issue of eminent domain is not even addressed. The railroad was not there when I bought the land; yet it was there when those along existing line in Rapid City bought their land. And yet you can find they are more "environmentally affected". Ridiculous. I wish to see an analysis by you of current SD law as it relates to eminent domain to determine if the DM&E proposal meets the criteria to allow for condemnation. The SD legislature felt that eminent domain was enough of an issue in this proposal to pass a law restricting eminent domain in February, 1999— Yet it is not even addressed in the DEIS.

Page ES-21

Table ES1 states "no significant impact" for Alternative C for Safety, yet "Significant Impact" for Alternative B.

In Volume I, Page 2-30, you state, "Alternative C, the Modified Proposed Route, follows much of the same alignment as Alternative B, the Proposed Route." Alternative B and C

are essentially the same. Who makes the decision to call one significant and the other not significant? Please show a side-by-side comparison of all the factors in this Safety comparison so this can be easily seen.

Page ES-22

The primary environmental benefit of this project is that DM&E's existing system in MN and most of SD, which is currently in generally poor condition, would be totally upgraded.....thus enhancing the safety of DM&E's existing rail system.

How many miles of DM&E's existing system will NOT be upgraded. What about those shippers on that portion that will not be upgraded? What about safety of that line? Include comparisons of all Alternatives.

Page ES-22

*"according to DM&E"... "DM&E has indicated"... "DM&E states"... "DM&E notes"
"DM&E is not a substantive source and their opinions have no place in the DEIS without an unbiased third party checking the figures and information. Please identify the analysts who have verified the information and assertions DM&E has provided to you.*

Page ES-25

SEA and the cooperating agencies then consulted with DM&E to determine which, if any, of these corridors would provide reasonable and feasible alternatives for the project. After considerable investigation, DM&E concluded that none of the existing corridor alternatives would be feasible.

It is inconceivable to me that you would rely on DM&E's conclusion to eliminate the existing corridor alternatives from consideration. I ask again for your unbiased analysis of all the D alternatives. Please provide all your data, not DM&E's.

Page ES-38

...Alternative D having more significant potential environmental impacts than either B or C. These impacts include greater noise, air emissions, and impacts to visibility at Badlands National Park, Black Elk Wilderness Area, and Wind Cave National Park in SD.

How is this possible? Prevailing winds in SD are from the north and west. Alternative C lies to the east and closest to Badlands National Park. Wind Cave is closer to Alternative D but the winds will be blowing away from Wind Cave and Black Elk and will be blowing toward Badlands. In any route Badlands will be impacted but most by Alternative C. Your assumption is faulty.

Page ES-38

According to DM&E, Alternative D adds such significant capital costs and operating inefficiencies to make the alternative unfeasible

DM&E opinions are unreliable. Where is your data?

Page ES-38

In sum, because the environmental impacts of D would be considerably greater than those of either Alternative B or C, and because it appears to fail to meet the Applicant's purpose and need for the proposal, SEA has concluded that Alternative D would not be the environmentally preferred alternative and accordingly has eliminated it from further consideration.

Yet in Volume I, page 2-43, you say "However, SEA concluded that one existing corridor alternative, would be retained for analysis in the Draft EIS. Explain the contradiction! Is it or is it not under consideration? Section 1502.1 of NEPA code, Paragraph f, states that "Agencies shall not commit resources prejudicing selection of alternatives before making a final decision." Alternative C was singled out as preferred based on information provided to you by DM&E. Instead of gathering the facts on each alternative and making the decision, you have made the decision and then skewed the facts to support Alternative C. This is a violation of the NEPA process. Please recall this prejudiced DEIS and start over with the facts!

Page ES-40

By contrast, Alternative C would avoid this area and likely have little, if any, impact on black-footed ferrets.

Black-footed ferrets thrive in prairie dog towns. There are numerous prairie dog towns along alternative C that have not been identified. Please identify ALL the prairie dog towns along alternative C and re-evaluate the harm to black-footed ferrets.

Page ES-45

Wetlands and riparian areas of Hay Canyon potentially would be the most adversely affected by the Hay Canyon Segment, while irrigated lands in the Angostura Irrigation District would potentially be the most adversely affected by the WG Flat Alternative, and the Oral Segment would have the most adverse affect on the Cheyenne River.

All three alternatives involve extensive riparian areas, wetlands, irrigated lands, and the Cheyenne River. It is obvious that there is NO way to go from Smithwick to the north of the Cheyenne without devastation to the environment. The no-build is the only option here. The COE and the Bureau of Reclamation have the responsibility to deny a permit on each and all of these routes. I urge you to do so. I question the acres of wetlands that have been identified in WG Flat and in the Oral Segment. Please check and confirm. In the Oral segment, the statement is made that land along the right-of-way may have to be taken, thus taking more irrigated land out of production. Please identify this land and the acres.

Page ES-48

Numerous sidings would be constructed along the existing line to accommodate the additional rail mounted equipment necessary for rebuilding the existing rail line.

Have these sidings been identified? Please provide location and impacts. Also do these temporary sidings require additional taking of private property? Please address how eminent domain laws would affect temporary sidings, esp. the eminent domain law in SD.

Page ES-48

...approximately 66,000 freight cars of primarily corn, wheat, soybeans, bentonite and kaolin clay, cement, and wood products would be transported annually.

Identify how much of the above products would be shipped from the northern Black Hills and Rapid City on rail line where there is no provision for upgrade. Please assess how this would affect safety and, socioeconomic impacts and what the accurate numbers would be if bentonite and kaolin clay, cement, and wood products could not be shipped due to Alternative C bypassing Rapid City.

Page ES-58

Under the bypass alternatives, the existing DM&E rail line through Rochester would not be reconstructed. Therefore, through trains or trains accessing local shippers would be required to operate over the deteriorated rail line...the benefits to these shippers from the other portions of the rail line would be minimized.

Consider Alternative C to be a bypass of Rapid City and the northern Black Hills (which it is). When you discuss Alternative C, this issue is not addressed. Please identify those shippers on the bypass of Rapid City (Alternative C) who would have to operate over deteriorated rail lines and the financial impact to them vs. Alternative D.

Page ES-59

One of the stated purposes of DM&E's proposal is to provide improved rail line to existing shippers. Thus, while from an environmental impact standpoint, the bypass alternatives appear to minimize overall impacts to the human environment, they may not contribute to the overall purpose and need defined for the project.

You can't have it both ways. If existing line use is so important in Rochester, then it is also important in Rapid City.. One of the stated purposes of this rail line is to provide improved rail service to existing shippers. This purpose is not fulfilled if Rapid City is bypassed.

Page ES-68

SEA has proposed environmental mitigation that would require DM&E to submit grade crossing safety plans to the applicable state and local transportation jurisdictions for their review and approval...

If, for instance, the state or local transportation authorities believe a grade separation or warning lights are necessary and the STB has not required this, who pays for it? Is DM&E obligated to do what local transportation authorities require at DM&E's cost? Please clarify and provide more specific mitigation. Also include socioeconomic impacts if taxpayers on a local, state, or federal level are required to pay for these safety measures.

Page ES-82

To the extent possible, Applicant shall minimize trains blocking grade crossings throughout its system.

Well that puts my mind at ease! Please define "minimize" with specific numbers(delay times) at each crossing. Who determines "to the extent possible"? DM&E? How does this mitigation address SD Codified Law 49-16A-119?

Page ES-84

During project related construction at grade crossings, Applicant, to the extent practicable, shall maintain at least one open lane of traffic at all times, to allow for quick passage of emergency and other vehicles.

This mitigation fails to address SD Codified Law 49-16A-119. If someone dies while waiting at one of these blocked crossings because DM&E deemed that it was not "practicable" to keep the lane open, then that's all right with you? Please strike the phrase "to the extent practicable". There should always be emergency access during construction. Otherwise, no-build is the only option.

Page ES-85

Where traffic cannot be confined to temporary access roads or established public roads, Applicant shall make necessary arrangements with landowners to gain access from private roadways.

Please review eminent domain laws to determine if access must be allowed, esp. the eminent domain law in SD. Otherwise this mitigation will not be an option.

Page ES-86

Applicant shall inspect temporary construction fencing regularly and promptly repair any damage. (Also see next paragraph, p ES-86)

This mitigation is too vague. "regularly" and "promptly" must be quantified to effectively mitigate this problem caused by the proposal.

Page ES-87

In negotiations with farmers and ranchers, Applicant shall be guided by the Land Use Mitigation Policy and Plan negotiated by the Applicant with the Landowner Advisory Board.

The Landowner Advisory is a seven-member Board hand-picked by Kevin Schieffer and paid by DM&E Railroad. Those farmers and ranchers that requested to be part of the Advisory Board but expressed some dissatisfaction with the proposal were denied to be members of the Board. There were no public meetings held by this Board for input and they were certainly not elected by landowners! They consist of yes-men for Schieffer who would agree to anything to advance this project. The mitigation for concerns that were identified by Schieffer and his employees is ridiculous. For Example: If livestock are hit by a train, the landowner must provide 8 enumerated articles of documentation, the last one being "any other information necessary for DM&E to verify property damage, the

value of the damage, and propriety of the claim.” The next paragraph states that “within 30 days after DM&E receives the Landowner claim, DM&E will pay or reject the claim”. All points addressed are heavily weighted in favor of DM&E. Because the Land Use Mitigation Policy and Plan was prepared by DM&E employees with no input from landowners, it must be rejected as a tool for mitigation.

Page ES-90

No US Fish and Wildlife Service lands, such as waterfowl production areas and wetland easements, would be crossed by project related construction or reconstruction.
How, then, is it possible and by what authority, would the USFWS be able to recommend to the COE that the DM&E Section 404 permit be denied should the Hay Canyon Segment be selected for construction? Please include an explanation of why USFWS would not then request denial of a permit on the WG Flat Route, which contains a large area of wetlands. Also the Oral Segment passes through a State Game Production Area. What are their rights and obligations to protect this area? Please provide this information.

Page ES-99

Prior to engaging in any project-related construction across Federal lands, Applicant shall conduct testing in the proposed right-of-way where there is a potential for paleontological resources of Class 3 or higher.

What about private land? I have found significant paleontological finds on my private property in the proposed route of condemnation and yet have not been contacted by anyone from Burns- McDonall to survey this for fossils. My property consists of Pierre Shale. Please develop mitigation for private land equal to or exceeding Federal land.

Forest Service Proposed Mitigation, Pg 2

In essence, the DM&E Railroad mitigated many of the potential environmental effects of their proposal at considerable cost to them... This action, taken by DM&E Railroad, is acknowledged by the US Forest Service as project mitigation.

Don't give DM&E so much credit. They drew the most environmentally damaging route the first time so they could be viewed as “compromising” when that route was rejected by the Forest Service. The Forest Service Plan does not allow a railroad to be built through any portion and to devise an Amendment to cover what should not be allowed is ludicrous. This sets the precedent that whenever anyone wants to do something that is not compatible with the Forest Service Plan, it will be amended if the political pressure is great enough. DM&E's so called project mitigation (above) created countless new hazards and environmental devastation because, without those changes, the no-build would have been the ruling by the FS. These Amendments should not be included in the Plan and the no-build should still be the ruling.

The Forest Service issued new management rules in November, 2000 which Agriculture Secretary Dan Glickman explains as follows, “We are increasing public participation in our planning process....By engaging people in Forest Service decision making and activities and keeping them involved throughout the implementation of our work, we will

be able to resolve issues before they become major conflicts.” (ENS American, November 10, 2000) Please explain the legalities of failure to involve the public in proposing this amendment in light of the new management rules. I feel the public was blindsided by this amendment to allow intrusion of DM&E into Forest Service Land and the Amendment must be withdrawn to allow for public comment.

Additional Comments:

1. No mention is made in the DEIS of the Landowner Polls conducted in Wyoming and South Dakota in October, 1999 and April, 2000 respectively. The Wyoming poll showed 95% opposition among landowners to any new construction by DM&E. The SD poll showed 85% opposition. Yet on July 16, 1998, the STB said they had “questions about the level of support from the people who would be directly affected by the proposed new construction an expanded operation of the DM&E system...The people who are and would become neighbors of DM&E would incur a large measure of the impact of construction and subsequent operation.” It would seem that when the poll results did not advance the STB’s agenda, they were completely ignored. Please address these two polls.
2. In November, 1999, the Angostura Irrigation District members passed a Resolution opposing any construction across irrigated lands in the Angostura Irrigation District by an overwhelming majority (97%). Yet there is no mention of this Resolution in the DEIS in any discussion of the Oral Segment vs. the Divide Route vs. Hay Canyon. The District members urged the BOR to oppose this construction by not issuing a permit to DM&E. Please address this resolution.
3. While the STB has given preference to a route that would require the acquisition of 280miles of private land, there is no provision at all of how to acquire this land. Landowners are solidly opposed to Alternative C. If DM&E’s acquisition of right of way were left to the marketplace, Alternative C would never be built. The STB or DM&E offer no explanation as to what the rights of eminent domain are in this case, how they would be utilized, what compensation obligations would result (impacts to the county for jury duty, impacts to DM&E for settlement, lawyer fees to both parties), and indeed if this property could even be acquired, given the existing DM&E line and the service being provided already to the PRB. This would certainly have a socioeconomic effect and should be considered in the DEIS.
4. What are the socioeconomic impacts of the decrease in property values because of the negative impacts of a railroad? Since less populated areas would have equally devastating but different impacts, please provided a county-by-county analysis to include loss of property tax revenue, loss of resale value to owner, and loss of ability to develop land for other purposes.

5. Land south of Angostura Lake, while at the present time is not developed, has the potential for development. Yet, there is no mention in the DEIS of this area. With the Heartland Express partially constructed and funding allotted to finish it, and with a Rural Water System being put in place in that area at the time of this writing, this area has not just potential for development but the certainty of development. Since you must consider future impacts, you must consider the impact on any land within a 5 mile radius of Angostura to be development and recreational property. Alternative C is 1.8 miles from Angostura Lake. Consider the loss in property tax to the county, the extreme decrease in land value for this purpose to the present owners, and the loss of recreational enjoyment. Keep in mind that the people settling in the area around Angostura do so for its quietness and its beauty. Please do an analysis of the area to the north of Angostura for population and consider that the land south of Angostura will be used in the same manner, were it not for DM&E Railroad

Paula Stith
2/21/01