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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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Dear Ms. Rutson:

Enclosed are the original and 10 copies of comments on Volume VIII-A, Appendices I-K, 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This DEIS contains much inaccurate information, outdated information, and repetitious information designed to overwhelm the reader with voluminous material and no substance.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, appearing to read 'Paulene Staben'.

Paulene Staben

COMMENTS ON VOLUME VIII-A APPENDICES I-K

Pauline Staker

The Tribal Consultation Summary lists Tribal Meetings that took place between November 1998 and February 2000. Several names are mentioned, Ian Ritchie, Clair Green, Dan Shinn, Brian Molyneaux, as attending these meetings. Please identify the connection of those people with the project. Are they employees of DM&E? Of Burns-McDonnell? Of the STB? What is their expertise in negotiating with Native Americans in developing this MOA? Please provide their associations and credentials.

Appendix I

Page 5-April 10-Medicine Wheel Coalition Meeting. The Coalition would like to see a noxious weed(*sic*) policy. The Coalition would also like to see an analysis of why existing routes won't work, and a survey of ceremonial and medicinal plants for inclusion in the DEIS.

Where is the noxious weed policy in the DEIS? Where is the unbiased analysis of why existing routes won't work? You have eliminated existing lines on the Applicant's assertion that they "will not further his need and purpose". Where is your independent and unbiased analysis of the Applicant's ability to use existing line and still make a profit? Where is the survey of ceremonial and medicinal plants in the DEIS?

Appendix J

Page 7- Each Treatment Plan will be incorporated by DM&E into their construction and use plan required for project rights-of-way on Federal Lands and the STB and /or appropriate Federal or State agency shall provide authorization to proceed with the implementation of the Treatment Plans on lands under their jurisdiction and, on Page 8-DM&E or its authorized representative will prepare a progress report ...every two weeks in documenting progress in the implementation of each Treatment Plan (BLM, COE, BOR, and USFS to be provided with a report every two weeks if their managed lands are involved or if requested)

This report must be provided to each private landowner also if their land is affected or if requested. Explain the provisions for archeological, historic, or cultural property that has been reported to you but no further contact was made by DM&E, Burns-McDonnell, or the STB. Explain the proper procedure for appeal if this property is not mentioned in the DEIS. What is the recourse available to the landowner, public or private, if the STB fails to investigate this property even though they have been informed of its existence and they allow construction to begin?

Page 10-Curation

The same conditions must apply to private land as apply to Federal Land. The STB must ensure curation of all records and other items resulting from identification and data recovery efforts is completed in accordance with 36CFR Part 79.

Identification Plan, Page 5 The reporting of the results and discussions of the cultural resources investigated shall be organized in a logical sequence. A detailed outline of the required elements for the report is contained in the following:

In April, 1999, archeological material was removed from my property during trespass without my permission. The only record I received (and I had to insist on that) was a two- line statement in a letter. Since then, there has been no further correspondence from the STB or Burns-McDonnell, even though I have written to both of you. The material taken has not been returned to me. Do the conditions stated above apply to cultural material taken from my property?

Appendix K

Page 1-1 Proposed Project Description

Pages 1-1 through 1-21 are more examples of endless repetition of material that has been presented over and over again in each Volume of the DEIS. It is unnecessary. NEPA regulations state that "Agencies shall avoid useless bulk in statements and concentrate effort and attention on important issues." Section 1.1 has nothing whatever to do with Biological Assessment! Please reissue this DEIS.

Page 1.1 DM&E currently operates four to eight trains per day over various sections of its system...

In Volume VII-A, Table FA-1, the number of trains listed from Rapid City to Midland is 2/day. In Volume III-A, Table 4.1-8, the number of trains per day from Wall(and presumably Rapid City) to Midland in listed as one/day(both ways), from Midland to Wolsey two/day, from Wolsey to Huron to Arlington 3/day, from Arlington to Brookings 4/day. Which one of these statements is correct? The writers of this DEIS must get together and present the same data in order to make an informed decision. This DEIS contains so many errors, the only option is to recall it. By the way, the actual number of trains from Rapid City to Chadron, NE is one or two/week.

Page 1-11 Coal mines would continue to open and increase production potentially increasing rail service problems both in the PRB mines and for the customers.

Where are your facts to back this up? Just the opposite is true (See Comments Volume 1). This has absolutely no place or need in a Biological Assessment.

Page 1-12 Alternative C with WG Flat Variation.

Why is just the WG Flat Alternative mentioned here? You have failed to identify a preferred Alternative in this area, instead you asked for comments on Hay Canyon vs WG Flat vs Oral Segment. It appears that here you have already decided on WG Flat. This contradicts what is discussed in other Volumes of the DEIS.

Page 1-14 Staging Yards under Alternative B

You list the Staging Yards for Alternatives B and C but not for Alternative D. Why not? The reference for all information about these yards, including employment, is listed as "DM&E 99". This is unacceptable as a source. You must verify this information from a non-biased source.

The entire Biological Assessment is woefully incomplete. You consider only threatened and endangered species. A biological assessment must consider all biological species. You must recall this DEIS and do the proper studies.

Volume III-A, Page 4.1-60, you state that "The mountain lion is a state threatened species that is found in sparsely populated areas of the Black Hills and Western South Dakota." Yet no mention is made of the mountain lion in Table 1-21, Endangered, Threatened, Candidate, or Proposed Species.

Table 6.1 on Page 6.6 Preliminary Determination of Effects to Federally Listed Endangered, Threatened, Proposed, Candidate, and Petitioned Species.
The conclusions drawn of "Not likely to Adversely Affect" and No effect" are inconsistent with information presented in Part 3, "Potentially Impacted Species", Part 4, "Impact Evaluation", and Part 5 "Cumulative Impacts.

1. **Black Footed Ferret-** On Page 3., it is stated that the Black Footed Ferret lives in arid prairies in proximity to prairie dog towns. They feed primarily on prairie dogs (90%) and utilize their burrows for dens. Since Alternative C removes 17.5 miles of prairie dog habitat, it will adversely affect the Black-footed ferret. Also, it is stated on Page 3-3 that the TBNG is a high-priority site for reintroduction of black-footed ferrets. If the site near Rosecrans is successful, ferrets may expand to prairie dog towns that would be crossed by the alternatives. Page 4.2 states that "the extent of potential black-footed ferret habitat with relatively high habitat function and value that would be affected by any alternative is unknown." If it is "unknown", how can you conclude it is "Not likely to adversely affect"? Page 4.2 states that "Sylvatic plague is fatal to black-footed ferrets." Where is your study that prairie dogs will migrate along the rail line and promote the spread of sylvatic plague? Please explain and reassess your "Not likely to adversely affect" conclusion.
2. **Piping Plover-** On Page 4.3, it is stated that "Depending on where work camps are located and the level of human activity in the project area more piping plovers may be affected." And "the presence of selenium and other trace elements in soils within the project area is unknown...increased selenium loads in the Cheyenne River could occur during erosion and runoff from construction sites." Since these two unknown factors would affect the piping plover, how is it possible to draw the conclusion of "Not likely to adversely affect"? As mitigation, you propose that "DM&E would employ erosion and sedimentation control measures..to minimize impacts on water

resources.” Will these measures be mandated or left up to DM&E? You must include specific mitigation in the Final EIS related to this.

- 3. Whooping Crane-** *On page 3.5, it is stated that the USFWS identified a need to protect and restore prime habitat along migration corridors. Roosting sites in wetlands should be protected, human activity restricted, chemical spills should be minimized, risk of collision with ...fences should be evaluated. On all alternatives, DM&E will decrease wetland acreage, increase human activity greatly during construction, increase risk of chemical spills, greatly increase the risk of collisions with fences since both sides of the track must be securely fenced. Please explain and reassess your conclusion of “No effect.”*

- 4. Interior Least Tern-** *On page 3.7, it is stated that a survey for interior least terns and piping plovers was conducted in June 1999 along 28 miles of the Cheyenne River. Water flows were measured by USGS at 2,300 cubic feet/sec. Many of the sand and gravel bars in the survey area had been under water several days prior to the survey. Terns had been seen nesting here in the past when water flows were not this high. “Thus, during the June 26, 1999 survey, water flows may have been too high for nesting.” You must redo this survey at a time when nesting is possible to make an accurate determination if there is an impact to the piping plover and interior least tern. The conclusion of “Not likely to adversely effect” must be reassessed after accurate surveys.*

On Page 4.6, it is stated that “Elevated selenium levels due to coal dust entering water or soils is unlikely since selenium concentrations in subbituminous coal from the Powder River Basin are far below concentrations found in bituminous coal of the mid-west and Appalachian basins”. Where are the studies to show the effects of selenium contamination by bituminous coal dust? Please reissue this DEIS and provide that information. On Page 4.7, it is stated that “There is a remote possibility of spills of petroleum products occurring that could affect fish that interior least terns eat.” It is suggested that DM&E will store toxic substances away from drainages. What about the hauling of toxic substances such as fuel and oil as a product? Since DM&E is a common carrier and holds a hazardous materials license, you must address what the effects of a derailment and the spill of substances toxic to this endangered species will be. Your conclusion of “No likely to adversely affect” is inaccurate.

- 5. Topeka Shiner-** *On page 3-8, it is stated that “No surveys have been completed for Topeka Shiner near any of the new railroad alternatives in South Dakota. Why were these surveys not done? How can you reach a conclusion of “No effect” if you have not studied this area? Recall this inaccurate DEIS and do the proper studies! On Page 4.8, it is stated that*

"Sedimentation could adversely affect water and substrate quality since Topeka Shiners inhabit...streams with good quality water and...silt-free substrates." How will erosion during construction and operation on unstable soils subjected to constant vibration that can cause significant damage within a mile from center (see Vibration study, Volume VII-A, Appendix F) affect sedimentation? Include effects on rivers and tributaries that are already classed as impaired.

6. **American Burying Beetle-** *On page 3-10, it is stated that "At this time, any habitat in SD with significant humus and/or topsoil for burying carrion is considered potential beetle habitat." On Page 4-11, it is stated that "Alternative C passes through soils with characteristics of prime farmland, but whether all or some are irrigated and/or cultivated is unknown. Why is this not known? Have you not done proper studies of land impacted by the alternatives to see what type of land is affected? Please withdraw this incomplete DEIS, do those studies, and reissue a new DEIS with complete information. On Page 4-12, Table 4-10 "Potential American Burying Beetle Habitat along Alternative C with the WG Flat Alternative." Where are the figures for the Oral Segment and Hay Canyon Segment? You have asked us to comment on which Alternative would be best of the Hay Canyon Alternatives; yet you fail to provide information on each segment. Please do this so we can make an informed decision. (In addition, WG Flat is the only segment of the Hay Canyon Alternatives for which information is provided on Page 4-15, Page 4-21, Page 4-27, and Page 4-29.)*
7. **Swift Fox-** *On Page 4-24, it is stated that "(swift fox) are more at risk where the proposed project crosses prairie dog colonies. Since Alternative C will cross 17.5 miles of prairie dog colonies, the most by far of any other Alternative, the swift fox will be adversely impacted on Alternative C.*
8. **Ute ladies' tresses-** *On page 3-13, it is stated that because access to potential sites on private lands was restricted, only 22 sites were adequately evaluated. The reason access was denied by many landowners is because Burns-McDonnell failed to hold meetings prior to sending the survey crews to private property. The landowner was forced to write his own access agreements and then, when the survey crews arrived, they claimed not to have the authority to sign any agreement. An agreement should have been developed with input by landowners and explained by Burns-McDonnell. The landowner was presented with an access agreement written by the Landowner Advisory Board, a hand-picked group of seven people, not all affected landowners, who were paid by DM&E with no input from anyone but Kevin Schieffer. The survey crews should have been introduced at a public meeting. Because agents of DM&E had been caught trespassing on private land in the past, the landowner had reservations about letting just anyone on their property. There was no provision made for compensation to allow this*

intrusion into our lives and onto our property. The entire survey process was badly mishandled. This DEIS must be withdrawn and the proper studies done conducted in a proper manner. Your conclusion of "Not likely to Adversely Effect" is, by your own admission, based on incomplete data.

- 9. Black-Tailed Prairie Dog-** *One Page 3-26, it is stated that Black-Tailed Prairie Dogs colonies occur throughout the project area in western SD and WY. Also, you state that only Alternative C is the only alternative that was mapped. Only the areas of Alternatives B and D that coincide with Alternative C are considered. How can you compare Alternatives B, C, and D accurately without mapping all Alternatives? It appears that Alternative C was picked as preferred before any studies were done. Enlighten me. I thought the preferred alternative was supposed to be picked after complete studies were done. Table 3.7 is misleading and meaningless. You also state that "the prairie dog's continued survival is imperative to the federally endangered black-footed ferrets survival." How then, with 17.5 miles of Alternative C intersecting prairie dog colonies, can you reach the conclusion of "Not likely to Adversely Effect"? Not only are prairie dogs impacted adversely, but on Page 4-29, it is stated that "Fragmentation of prairie dog colonies could impact the reintroduction of black-footed ferrets." Thus both would be adversely affected.*

PART 5 Cumulative Effects

On Page 5-1 it is stated that "Cumulative effects are those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action area subject to consultation."

This is another example of verbose rhetoric that is prohibited in an EIS. No mention is made of the future adverse impact of DM&E Railroad, a private corporation, on threatened and endangered species.

Table 5-1 Summary of Measurable Effects to Habitat

Of the 12 species listed, you say mitigation is possible for seven species. Yet there is no specific mitigation required by you. You must enumerate mitigation measures and include enforcement measures and accountability specifics. Otherwise, as in this entire DEIS, mitigation is just rhetoric. An example of lack of mitigation is your suggestion on Page 4-1 that "DM&E would employ measures to minimize and control sediment discharge." That is not acceptable as mitigation!

PART 6 Conclusions

Page 6-1 The first sentence, "The proposed PRB expansion project is designed to provide efficient and competitive rail service from coal mines in Wyoming's Southern Powder River Basin to more eastern electrical utilities" shows your total bias in favor of this project and has no place in the DEIS. In fact this entire

DEIS is filled with falsehoods and endless repetitions designed to point to approval of Alternative C. This sentence is just one more example.

The conclusions are not supported by the material presented in the Biological Section; every section under this heading ends with "The project is not expected to contribute to any change in the species status before or after completion." Yet no mitigation measures are required to minimize the adverse impacts listed in Parts 1 through 5 of the Biological Assessment (See above comments). Again, I would expect to see all affected species covered in a Biological Assessment, not just endangered or threatened species. This is incomplete!

Inventory For Ute Ladies' Tresses

The writer of this section acknowledges that a very incomplete study was done for several reasons:

- 1. Field inventory was conducted from Sept 14th to Sept 25th, a time when the orchid would be difficult to find and identify because it would not be flowering, making identification very difficult.*
- 2. 27 potential sites were located but only 8 studied because permission could not be obtained from private property owners. This should give you an indication of the level of support and trust of DM&E—there is no support or trust! The lack of advance preparation by Burns-McDonnell and their failure to work with landowners on a trespass agreement is the reason for this incomplete study. This lack of study is unacceptable! It must be redone.*
- 3. A known location was searched but no orchid found. This may have been due to lack of growth in a less than optimal year, according to the report. Perhaps there are many more orchids in the area than what were found because 1999 was a less than optimal year in the entire project area.*

A new inventory must be conducted at a time when the orchids are flowering, when proper groundwork is done to gain access to private property, and when the year is more "optimal" than 1999.

*Paula Stelm
2/27/01*