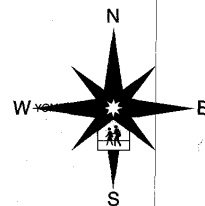




JIM GERINGER
GOVERNOR

State of Wyoming
Office of Federal Land Policy
Art Reese, Director



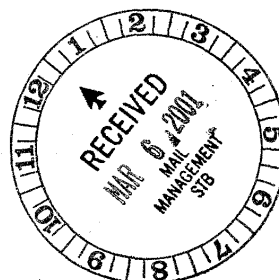
March 5, 2001

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

ENTERED
Office of the Secretary

MAR - 6 2001

**Part of
Public Record**



Attn: Victoria Rutson
Environmental Project Manager
Environmental Filing

Re: Surface Transportation Board Finance Docket 33407, Dakota, Minnesota & Eastern
Railroad Corporation Draft Environmental Impact Statement
State Identifier 98-069

Dear Ms. Rutson:

On behalf of the State of Wyoming, this office has reviewed the referenced Draft Environmental Impact Statement. We also provided the document to all affected state agencies for their review, in accordance with State Clearinghouse procedures. Enclosed you will find letters from the Wyoming Game and Fish Department, Wyoming Business Council's Minerals, Energy and Transportation Division, Wyoming State Geological Survey, Wyoming Department of Transportation and the Wyoming State Historic Preservation Office which resulted from their reviews. State agency comments are specific to their respective agency missions. While the State defers to their technical expertise in developing the State's position, the responsibility to ultimately articulate the official state policies and positions lies with the Governor or the Office of Federal Land Policy. In that regard, please reference Governor Geringer's letter which is included in this package of information and which is also being sent to Secretary Williams.

We look forward to continued participation in the public review process. Please provide this office **eight** hard copies or electronic copy (submit to schild@state.wy.us) of future

Victoria Rutson

March 5, 2001

Page Two

information for review and distribution to interested and affected agencies. Thank you for this opportunity to comment.

Sincerely,



Art Reese
Director

AR:jr:jh

Enclosures (6)

cc : Governor Geringer
Vernon A. Williams, Secretary, Surface Transportation Board
Senator Craig Thomas
Senator Mike Enzi
Representative Barbara Cubin
Natural Resources Sub-Cabinet
Bobbi Frank, Wyoming Association of Conservation Districts
Joe Evens, Wyoming County Commissioners Association
Niobrara County Commissioners
Weston County Commissioners
Campbell County Commissioners
Crook County Commissioners
Converse County Commissioners
Wyoming Business Council, Minerals Division
State Historic Preservation Office
Wyoming Department of Transportation
Wyoming State Geological Survey
Wyoming Game and Fish Department
Jack Palma, Holland and Hart



STATE OF WYOMING
OFFICE OF THE GOVERNOR

JIM GERINGER
GOVERNOR

STATE CAPITOL
CHEYENNE, WY 82002

March 5, 2001

Mr. Vernon A. Williams, Secretary
Office of the Secretary
Case Control Unit
STB Finance Docket No 33407
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

ATTN: Victoria Rutson
Environmental Project Manager
Environmental Filing

Re: Surface Transportation Board Finance Docket 33407, Dakota, Minnesota & Eastern
Railroad Corporation Draft Environmental Impact Statement, State Identifier 98-069

Dear Secretary Williams and Ms. Rutson:

On behalf of the State of Wyoming, the Office of Federal Land Policy has reviewed the referenced document. They also provided the document to all affected state agencies for their review, in accordance with state clearinghouse procedures. We appreciate your due consideration of state agency comments (specific to their missions) on the Draft Environmental Impact Statement. You will receive them under separate cover from the Office of Federal Land Policy. While the State defers to their technical expertise in developing the State's position, the responsibility to ultimately articulate the official state policies and positions lies with the Office of Federal Land Policy or me. The State of Wyoming's agencies stand ready to assist your efforts, and we encourage you to utilize their expertise as well as the expertise of the counties and conservation districts.

Since the beginning of this process, I have said that I support the concept of increasing rail transportation access in Wyoming, and I still do. I have also said that it must be a locally driven issue, which I still believe. I commend those at Dakota, Minnesota and Eastern Railroad for the outreach that has been made to the affected landowners in the State of Wyoming.



March 5, 2001

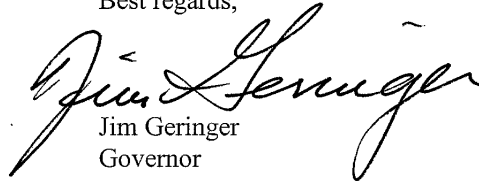
Page 2

However, informed consent still does not exist on the part of the landowners, particularly with regard to rights-of-way. There is still more to do.

There are unresolved issues of human safety as related to public and private railroad crossings. This is a significant issue that requires your utmost consideration.

Thus, while I believe that it is important to maximize the State of Wyoming's coal industry, I can offer only conditional support of DM&E's efforts based on the concerns of the landowners and the human safety issues, which are unresolved.

Best regards,



Jim Geringer
Governor

JG:jr:jh:lq

cc : Senator Craig Thomas
Senator Mike Enzi
Representative Barbara Cubin
Natural Resources Sub-Cabinet
Bobbi Frank, Wyoming Association of Conservation Districts
Joe Evens, Wyoming County Commissioners' Association
Niobrara County Commissioners
Weston County Commissioners
Campbell County Commissioners
Crook County Commissioners
Converse County Commissioners
Wyoming Business Council, Minerals Division
State Historic Preservation Office
Wyoming Department of Transportation
Wyoming State Geological Survey
Wyoming Game and Fish Department
Wyoming Office of Federal Land Policy
Jack Palma, Holland and Hart



Tuesday, February 27, 2001

Wyoming State Clearinghouse
Office of Federal Land Policy
Herschler Building, 1 West
Cheyenne, WY 82002-06000

Re: OFLP Project # 98-069 (DM & E Powder River Expansion Project)

These comments regarding the DM & E Powder River Expansion Project have been approved by the Director of the Wyoming Business Council's Minerals, Energy and Transportation Division and are specific to this agency's statutory mission within State government which is creating a proactive organizational structure to facilitate business and industry growth. In that regard these comments are meant to, in association with all other agency comments, assist in defining the Official State Position. These comments defer to and are subordinate to the Official State Position.

While the draft EIS involves many states, the emphasis of this comment letter will focus solely on the proposed action that would take place in the Powder River Basin area of Wyoming.

The draft EIS states that five Wyoming counties would be affected by this action. It also states these counties, Niobrara, Weston, Campbell, Crook and Converse, will experience increases in direct and indirect jobs as a result of the proposed railroad expansion. To reference the draft EIS Volume 3B, page 4.4-141, the estimated construction earnings for all five counties totals over \$47 million dollars. While in Volume 3B, page 4.4-139 the estimated direct jobs start at a low of 39 to a high of 175, indirect jobs range from 12-52. The draft EIS predicts the five counties will also experience increases in tax revenues, as well.

These comments are reflective of a specific agency mission only. These comments defer to and are subordinate to the Official State Position

Wyoming State Clearinghouse
Office of Federal Land Policy
Herschler Building, 1 West
Cheyenne, WY 82002-06000

Coal mines in the Powder River Basin will certainly benefit, if only from additional ways of transporting their raw materials to relatively unutilized markets. In 1999 approximately 44 million tons of Powder River Basin coal was sold in the upper Midwest market area that would be targeted by the proposed expansion. While another 5.5 million tons went to Canada and still another 10 million tons of river coal sale could be targeted by the new line, according to the Wyoming State Geological Survey's publication CR 00-1 Wyoming Mines and Markets. The draft EIS states the new train line, by increasing train traffic by as many as 34 additional trains per day, would be capable of transporting an additional 100 million tons of coal annually out of the Powder River Basin. Because this coal is considered cleaner burning coal than that produced in other parts of the country, it could be argued that the additional markets in the Midwest to be served by the proposed expansion will also benefit from burning the cleaner Powder River Basin coal that is otherwise not currently utilized. By adding an additional way for the mines to transport their coal, this will result in competition for the existing railroads. Increases in transportation costs should decrease as a result, thus creating more valuable coal. By increasing the value of the coal, the mines would be able to produce more coal resulting in additional revenue to the state through mineral taxes and royalties.

Concerns over land owner and ranching issues do arise. Some of the issues would include fires, fencing, weeds, right of ways placement, notification and removal of livestock carcasses, water availability, pasture and hay field access, coal dust, and safety issues.

Other concerns arise when discussing public safety. With all the additional rail crossings and with the increase in train traffic, there is a higher probability for accidents. Proper grade crossings, and emergency vehicle response times need to become a consideration when considering the least damaging placement of the proposed line.

Thank you for the opportunity to comment.



John Robitaille
WBC Minerals, Energy and Transportation Division

These comments are reflective of a specific agency mission only. These comments defer to and are subordinate to the Official State Position.

WYOMING

DEPARTMENT OF STATE PARKS & CULTURAL RESOURCES STATE HISTORIC PRESERVATION OFFICE

Barrett Building
2301 Central Ave.
Cheyenne, WY 82002

(307) 777-7697
FAX (307) 777-6421

December 13, 2000

Art Reese, Director
Office of Federal Land Policy
Herschler Building, 1W
122 W. 25th Street
Cheyenne, WY 82002

RE: DM&E Powder River Basin Expansion Project Draft Environmental Impact
Statement (OFLP Project ID#: 98-069); SHPO #0498RLC044

Dear Mr. Reese:

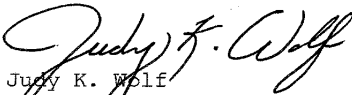
Our staff has received information concerning the aforementioned Draft Environmental Impact Statement (DEIS). Thank you for allowing us the opportunity to comment.

Within the Programmatic Agreement (PA), Glossary of Terms/Acronyms, the definition of "site" is different from that given in the Identification Plan (IDP). We request that the definition given within the IDP also be used within the PA. Additionally, this definition needs to recognize that each state has its own specific definition of a site and that these definitions will be utilized within the appropriate states. Furthermore, the PA needs to include signature lines for each State Historic Preservation Office as well as the Advisory Council on Historic Preservation.

If the aforementioned corrections to the PA are made, and the PA is executed and implemented, we have no objections to this project.

Please refer to SHPO project control number #0498RLC044 on any future correspondence dealing with this project. If you have any questions, contact Richard Currit at 307-777-5497 or me at 307-777-6311.

Sincerely,



Judy K. Wolf
Deputy State Historic Preservation Officer

JKW:RLC:jh

Jim Geringer, Governor



John T. Keck, Director



WYOMING STATE GEOLOGICAL SURVEY

P.O. BOX 3008 • LARAMIE, WYOMING 82071-3008

307/766-2286 • FAX 307/766-2605

E-MAIL: wsgs@wsgs.uwyo.edu • WEB: www.wsgsweb.uwyo.edu

STATE GEOLOGIST – Lance Cook

GEOLOGICAL SURVEY BOARD

Ex Officio

Governor Jim Geringer

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Appointed

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GEOLOGIC MAPPING

Alan J. Ver Ploeg

INDUSTRIAL MINERALS
AND URANIUM

Ray E. Harris

METALS AND
PRECIOUS STONES

W. Dan Hausel

OIL AND GAS

Rodney H. De Bruin

PUBLICATIONS

Richard W. Jones

December 18, 2000

MEMORANDUM

TO: Art Reese, Director, Office of Federal Land Policy

FROM: Lance Cook, P.G., State Geologist

SUBJECT: DM & E Powder River Basin Expansion Project Draft EIS
(State Identifier #98-069)

These comments regarding the DM & E EIS are specific to this agency's statutory mission within State government, which is to promote the beneficial and environmentally sound use of the State's resources while helping to protect the public from geologic hazards. In that regard these comments are meant to assist in defining the State position, in association with all other agency comments. These comments defer to and are subordinate to the State position.

There are many electric utilities depending on reliable and affordable deliveries of coal from the Powder River Basin of Wyoming. A third railroad will certainly increase the likelihood of successful and reliable rail deliverability from this basin.

Deregulation of the country's electrical utilities occurring at the state, regional, and national level are forcing utilities to look at ways to lower the cost of their generation. Fuel transportation and distribution cost are the most significant portions of their overall cost of electrical generation. PRB coal is currently market limited by transportation cost. Additional competition will help in achieving more favorable transportation rates, and will make Wyoming coal more competitive in the northern markets.

Increased transportation competition will aid in the expansion of the Wyoming coal market. Savings will be created for the nation's electric consumers while assisting Wyoming in the form of a more competitive coal industry.

The new line into the Powder River Basin will immediately impact the Wyoming mines in the central pod (Caballo, Belle Ayr, Cordero-Rojo, and Coal Creek) and southern pod (Jacobs Ranch, Black Thunder, North Antelope/Rochelle, North Rochelle, and Antelope). These mines produced a total of 278,732,352 short tons or almost 83% of the Wyoming State total production in 1999.

One Item not mentioned in the DEIS was that the new route into the basin will give the producers a second way to get coal out of the basin should the present joint line of the UP and BN&FE become blocked or damaged. The vulnerability of the joint line was demonstrated in early September of this year when a train derailment near Bill, Wyoming closed all three mainlines to the mines of the eastern Powder River Basin for approximately 18 hours (COAL Daily, 9/15/00). A loaded Burlington Northern & Santa Fe unit train derailed 9 coal cars while heading east on main track number one. A loaded Union Pacific train who was crossing from main track number three to main track number two collided with the derailed BNSF cars causing the UP train to derail two locomotives and two coal cars. The result of the accident fouled all three main tracks, but no major injuries were reported. While 18 hours seems but a small impact, the disruption to the mines delayed approximately 40 unit-trains, or the shipment of nearly 600,000 tons of utility coal.

We have noted a letter the U.S. Department of Agriculture sent in early September supporting the DM&E expansion, expressing the expectation that the new rail line will be a positive boost to agricultural shippers. The USDA stated that "the project's rail upgrades and new construction is necessary for economic expansion of agricultural markets". The USDA also stated the project will "improve farm income, boost rural economic development and reduce pressure and deterioration on local roads (COAL Daily, 9/20/00). We make this final comment because, in recent years, the coal shipments out of the Powder River Basin have had problems competing for rail capacity with the seasonal shipments of wheat and other grains. Currently the BN&SF and UP railroads claim that coal only accounts for a little over 20% of their total business. The DM&E expansion may serve the coal producers in a greater capacity by improving the movement of agricultural products so as to minimize the seasonal conflicts of grain and mine products.

If there are questions on our comments, please direct them to the appropriate geologist on my staff or to me. Bob Lyman is our coal geologist.

These comments are reflective of a specific agency mission only. These comments defer to and are subordinate to the State Position.

THE STATE



OF WYOMING

Jim Geringer, Governor

Sleeter Dover, Director

Department of Transportation

5300 BISHOP BOULEVARD (82009)

P.O. BOX 1708

CHEYENNE, WYOMING 82003-1708

MEMORANDUM

December 11, 2000

TO: Tim Stark, P.E., Environmental Services Engineer

FROM: David R. Bryden, Utilities/Railroad Administrator

SUBJECT: Request by the Governor's office for comments on DM&E Railroad Draft EIS

I believe any E.I.S. concerns this department may have, have been addressed by other state and federal agencies, but you should make the final determination on that issue.

My concerns, as the regulator of public railroad crossings, are that the DM&E Railroad has yet to contact the counties to discuss county concerns affecting the railroad crossings and various county roads.

The two state highways affected by the proposed new tracks were addressed in a meeting with the railroad earlier this year and will have separations (viaducts). The county roads have not been addressed in the same manner.

On August 15, 2000, I sent a letter to each of the affected counties asking if they had been contacted by the DM&E Railroad. Their answer was no, at least not at the time they received the letter. The counties are concerned, as are several citizens who have contacted this office, that many of the affected county roads which have school bus traffic and are the main arteries for the county have not been fairly addressed. In the county's eyes, these roads are as valuable as the State's highways in the area..

I have been contacted by Mr. Ray G. Gigear, Project Engineer for the DM&E, asking that WYDOT agree to language submitted in a draft agreement approving various degrees of crossing protection affecting both state and county roads. I told Mr. Gigear I could not agree to the language of the proposed agreement until the DM&E has met with each county and discussed and agreed to the protection at each crossing. Mr. Gigear agreed to meet with the counties to discuss the issue. As of today's date, I do not know if this has been done.

This may not be an E.I.S. issue but it is an important issue to the overall planning process. If changes are made to the basic proposals of the DM&E, at each of the road-railroad intersections, it could affect issues related to the E.I.S. This information is due to the Wyoming clearing House office by December 18, 2000.

WYOMING
GAME AND FISH DEPARTMENT

Jim Geringer, Governor



John Baughman, Director

"Conserving Wildlife — Serving People"

December 18, 2000

WER 8818
Surface Transportation Board
STB Finance Docket No. 33407
Draft Environmental Impact Statement
Dakota, Minnesota and Eastern Railroad
Corporation
Powder River Basin Expansion Project
State Identifier Number: 98-069

Art Reese, Director
Office of Federal Land Policy
Herschler Building, 1W
122 W. 25th Street
Cheyenne, WY 82002

Dear Mr. Reese:

These comments regarding the Draft Environmental Impact Statement for the Dakota, Minnesota and Eastern Railroad Corporation Powder River Basin Expansion project have been approved by the Director and are specific to this agency's statutory mission within State government which is "Conserving Wildlife, Serving People". In that regard these comments are meant to, in association with all other agency comments, assist in defining the Official State Position. These comments defer to and are subordinate to the Official State Position.

Terrestrial Considerations:

We offer the following comments:

- 1) On page ES-19, the list of potential impacts in Wyoming should include hunting and recreation. Hunting is one of the primary land use activities in Niobrara, Weston, and Campbell counties in Wyoming. It is also a key management tool necessary to keep wildlife populations near desired levels. The addition of over 200 miles of new rail line through relatively pristine areas in Wyoming should be considered an impact to hunting.

These comments are reflective of a specific agency mission only. These comments defer to and are subordinate to the Official State Position.

Hunting should also be listed in Table ES-1 on page ES-21. Hunting/Recreation should also be included on page 7-5 under the list of "Significant Environmental Impacts Which May Warrant Mitigation" because of the expected loss of public hunting opportunities and access to public lands.

- 2) In Table ES-1 and Table 6-2, the impacts of Alternatives C and D are listed as not significant for endangered species. In contrast, numerous potential impacts to endangered and threatened species are detailed in Appendix K. These two portions of the document should be reconciled.
- 3) On page ES-38, it is stated: "In sum, because the environmental impacts of Alternative D would be considered greater than those of either Alternatives B or C . . .". Documentation was not provided that would support this statement. It appears Alternative D has been rejected because of this alternative's higher costs. From the standpoint of biological resources, we fail to see how the impacts of adding an additional rail line in an existing corridor could be greater than adding over 200 miles of new track through relatively undeveloped habitat. Although Alternative D may increase costs of the project, decreased impacts to many resources should be a consideration.
- 4) On page 6, Attachment B of the Executive Summary, it is stated: "A complete wildlife mitigation plan will be developed and disclosed in the Final EIS . . .". We believe mitigation on a project of this magnitude should be developed for each alternative, in order that full disclosure of implementation actions can be outlined and considered throughout the analysis process.
- 5) Under the recreational mitigation measures listed on page ES-94, there is the potential for lost or reduced public hunting and access to public lands as a result of this proposed project. Mitigation measures, such as the acquisition of replacement access, should be considered.
- 6) On page 4.4-85, it is stated: "The only measurable impact to big game is the amount of habitat lost due to conversion to rail line right-of-way". As part of the Department's preliminary evaluation of this project, and with the help of DM&E funding, we collected movement and distribution data for big game species along proposed Alternatives B and C. This data indicates heavy use along the entire proposed right-of-way by antelope, and also pockets of heavy use by mule deer (see Maps 3 and 4). Based on the data and input from field personnel and local landowners, there is an indication of substantial north/south movement by these animals in the spring and fall. This data was provided to the applicant, but is not mentioned in the Draft EIS. It should be included in the Final EIS. Construction of the rail line and its associated fences can be expected to create a barrier to daily and/or seasonal big game movements.

These comments are reflective of a specific agency mission only. These comments defer to and are subordinate to the Official State Position.

The restriction of big game movements is not acknowledged in the document, but the loss of big game habitat is noted. However, no mitigation measures are proposed. Prior to release of the Final EIS, the applicant and the Department should confer on acceptable mitigation measures to compensate for the loss of habitat as well as the movement restrictions. One potential mitigation measure could include overpasses to allow unrestricted north/south movement of antelope. Based on flight data, large groups of antelope were most commonly sighted along a corridor near U.S. Highway 85, Black Thunder Creek, and just to the east of the Rochelle Hills (see Map 2). Other potential mitigation could include habitat improvements near the selected corridor to compensate for habitat loss.

- 7) On page 4.2-27, it is stated: "In the project area, wildlife is an important resource that provides recreational, aesthetic, and economic benefits". For a project of this size, a single sentence stating the importance of wildlife is inadequate. The economic importance of fish and wildlife in Wyoming approaches 1 billion dollars annually (consumptive and non-consumptive value). The report should include more specific figures regarding the economic and recreational benefits of wildlife in the area. These are items that may be significantly impacted by the project and should be considered during the evaluation process. Prior to release of the Final EIS, we request the potential impacts be identified and mitigation measures developed in coordination with the Department.
- 8) The Introduction to the mitigation chapter on page 7-1 states: "Chapter 7 presents the Section of Environmental Analysis' (SEA) preliminary recommended environmental mitigation. SEA's mitigation is based on its environmental analysis of the Powder River Basin (PRB) Expansion Project, which is the largest and most challenging construction proposal ever before the Surface Transportation Board". Based on this statement, and the large number of environmental impacts listed throughout the Draft EIS, the mitigation measures outlined should be more specific. The mitigation measures listed in Chapter 7 are very general, with no mention of mitigation for a number of species that are listed as significantly impacted in the Draft EIS.
 - a) Under the recreational mitigation measures listed on page 7-22, there is the potential for lost or reduced public hunting and access to public lands as a result of this proposed project. Again, as mentioned above, mitigation measures such as the purchase of access through direct land acquisition and/or easements to other currently inaccessible public lands would be appropriate mitigation.
 - b) The Wyoming Game and Fish Department should be included in mitigation item #74.

These comments are reflective of a specific agency mission only. These comments defer to and are subordinate to the Official State Position.

- c) Since a substantial amount of wildlife habitat will be directly lost in Wyoming as a result of this project, and an additional amount will be indirectly impacted, we suggest the applicant mitigate with habitat projects designed to replace lost habitat or enhance existing habitat. Some of these mitigation measures have been discussed with the applicant, but no mention of these measures is made in the Draft EIS.
- d) Mitigation measure # 80 requires the applicant to remove carcasses from the rail line right-of-way. We request this mitigation measure be expanded to require the company to develop a reporting system to include a count and the locations of animals removed (all species) and to provide a report to the Department on an annual or semi-annual basis. A collection permit would be required from the Department and reporting would be a condition to that permit. This data would provide us with a better understanding of wildlife losses to incorporate into our population analysis processes. This data will also assist in identifying any additional mitigation that may be needed to address wildlife impact issues (the FEIS should specify that the applicant will be required to address unforeseen wildlife impacts by consulting with the Department and implementing appropriate mitigation). Injured wildlife should be reported to Department personnel as soon as possible. Raptor carcasses should be reported to both the Department and the U.S. Fish and Wildlife Service.
- e) The Department had previously discussed with the applicant the funding for additional wildlife law enforcement during the construction of the line within Wyoming. Based on previous experience, this is a very necessary mitigation for the presence of a large construction work force. Additionally, the company should develop an environmental awareness training program to inform workers about trespass laws, current laws regarding use of public land, sensitive wildlife species and habitats, and Game and Fish regulations. These mitigation measures should be identified in this section.
- f) Where water sources for wildlife are impacted or are otherwise made inaccessible by project construction and operation, mitigation should include development of new water sources and/or improvement of existing water sources, on a one-to-one basis and near the impacted water source. The company will need to work closely with our local biologists to identify those big game water sources that are cut-off from access.
- g) Mitigation item #78 states; "Prior to initiating new rail line construction . . .". This statement simply mentions the design aspect of under- and overpasses. We believe the applicant and the Department should agree on the locations as well as designs of crossing structures. This mitigation measure should be discussed and included in the Final EIS.

These comments are reflective of a specific agency mission only. These comments defer to and are subordinate to the Official State Position.

- h) The fencing standards and designs listed in mitigation #79 should be agreed upon prior to release of the Final EIS. Fence designs should be used that do not restrict antelope movement. This can be achieved with not more than a 4-wire fence with a smooth bottom wire a minimum of 16" above ground level, and a top wire no more than 42" above ground level. Less restrictive fences than this design should be incorporated where possible. Where more restrictive fences are required (e.g. domestic sheep pastures), items f and g above will need to be considered in coordination with our local biologists.
- i) The project may have significant impacts on sage grouse, including direct loss of nesting habitat, disruption of courtship, indirect loss of habitat through increased disturbance, and possibly direct mortality. We have included a map detailing documented sage grouse leks along much of Alternatives C and D (Map 1). As the map indicates, Alternative C will likely have a greater impact on sage grouse in Weston and Niobrara Counties. Within the buffer areas shown on the map, habitat alterations or disturbances will likely impact lek activity, nesting, and brood-rearing.

In addition to verified active leks, other probable leks were also located during flights in the spring of 2000. Additional grouse sightings from the flights are also shown. Although no lek activity was noted at these sites, the presence of the birds indicate the probability of other leks in the vicinity. This data was given to the applicant previously but is not mentioned in the Draft EIS. It should be included in the Final EIS. Despite the high potential for impacts to this species (noted on page 4.4-88 and in Table 5.1-1), no mitigation measures are proposed in the Draft EIS. Based on the current status of this species and the potential for it to be listed under the Federal Endangered Species Act, mitigation should be included. The applicant should consult with the Department to develop appropriate mitigation measures for this species prior to release of the Final EIS. It should be noted that Connelly (2000) states for non-migratory grouse populations occupying habitats that are distributed uniformly, sagebrush and herbaceous understories within 3.2 km (2 miles) need to be protected (i.e., do not manipulate or disturb). Furthermore, Connelly, et.al. (2000) states that those sage grouse populations occupying sagebrush that is not uniformly distributed, suitable habitats within 5 km (3 miles) from all occupied leks need to be protected.

- j) On page 1-20, it is stated: "Construction of the PRB Expansion Project would involve potential impacts to certain federally listed endangered and threatened species". Despite this statement, the listing of numerous significant impacts to endangered species in Table 5.1-1, and the statement that mitigation is possible for these species in Table 5-1 (Appendix K), no mitigation measures are listed for any proposed or listed endangered or threatened species. This should be corrected in the

These comments are reflective of a specific agency mission only. These comments defer to and are subordinate to the Official State Position.

Final EIS. Tables in the EIS should be changed to indicate significant impacts to proposed or listed threatened or endangered species and appropriate mitigation measures should be included. Also, a species currently undergoing a status review in the western U.S. for listing under the Endangered Species Act, the yellow-billed cuckoo, is known or expected to nest in eastern Wyoming in cottonwood/riparian habitats. Coordination with the USFWS may be appropriate to confirm whether this area is considered within the western range of the species.

- k) On page 6-4, it is stated: "Mitigation measures and stipulations will provide some measure of protection to bald eagles. . .". Similar statements are made regarding mountain plovers and swift fox. Once again, mitigation is mentioned, but the report fails to provide any actual mitigation measures. Prior to release of the Final EIS, these mitigation measures should be defined and made available for comment.

In conclusion, though some impacts associated with the project are examined, others are not, and mitigation measures are under-developed. We do not feel the Draft EIS adequately addresses the biological resources in the area. We are available for consultation on impacts and mitigation, and encourage discussions on the issues we have presented before the completion of the Final EIS.

Aquatic Considerations:

We are concerned with the lack of aquatic information in the DEIS. At a minimum, the locations of all stream and wetland impacts should be provided to better allow project assessment. In Section 4.2.8.3 (page 4.2-31), comments relative to aquatic resources are restricted to the limited opportunities for fishing. In identifying existing environmental conditions, the primary issue is existing fish populations and habitats, with recreational opportunities being secondary. The DEIS does not even describe existing fish populations.

The area of northeastern Wyoming which the proposed railroad will traverse contains numerous perennial and intermittent streams which support abundant fish and amphibian populations. Some of these species are considered to be sensitive by the Wyoming Game and Fish Department, including the plains minnow (status 3) and flathead chub (status 3). The presence of these species is not even identified in the DEIS. Additional fish species occurring in the project area, yet not even identified in the DEIS, include longnose dace, river carpsucker, plains killifish, creek chub and green sunfish. These deficiencies have been identified in previous correspondence. In addition, we previously suggested that to adequately assess the project impacts to aquatic resources, additional sampling needed to be conducted along the various route alternatives. To our knowledge, no additional sampling was ever completed.

These comments are reflective of a specific agency mission only. These comments defer to and are subordinate to the Official State Position.

Mr. Art Reese
December 18, 2000
Page 7 – WER 8818

Given the lack of aquatic information in the DEIS, it is not possible for us to fully assess the impacts of this project on aquatic resources. This should be corrected in the FEIS. The FEIS should also specify that impacts to aquatic resources will be mitigated as necessary.

Sincerely,

A handwritten signature in cursive script that reads "Bill Wickers".

BILL WICHERS
DEPUTY DIRECTOR

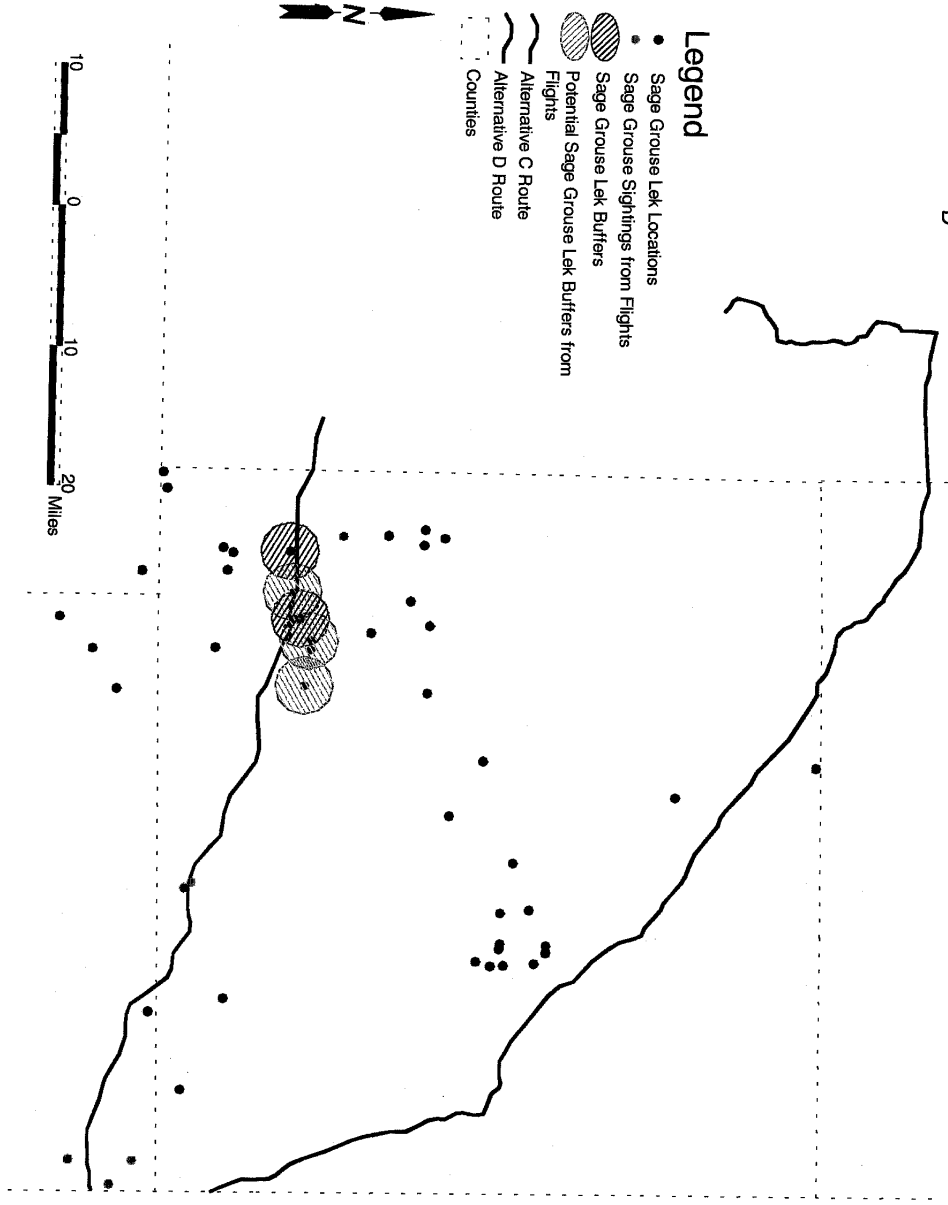
BW:TC:as

Literature cited

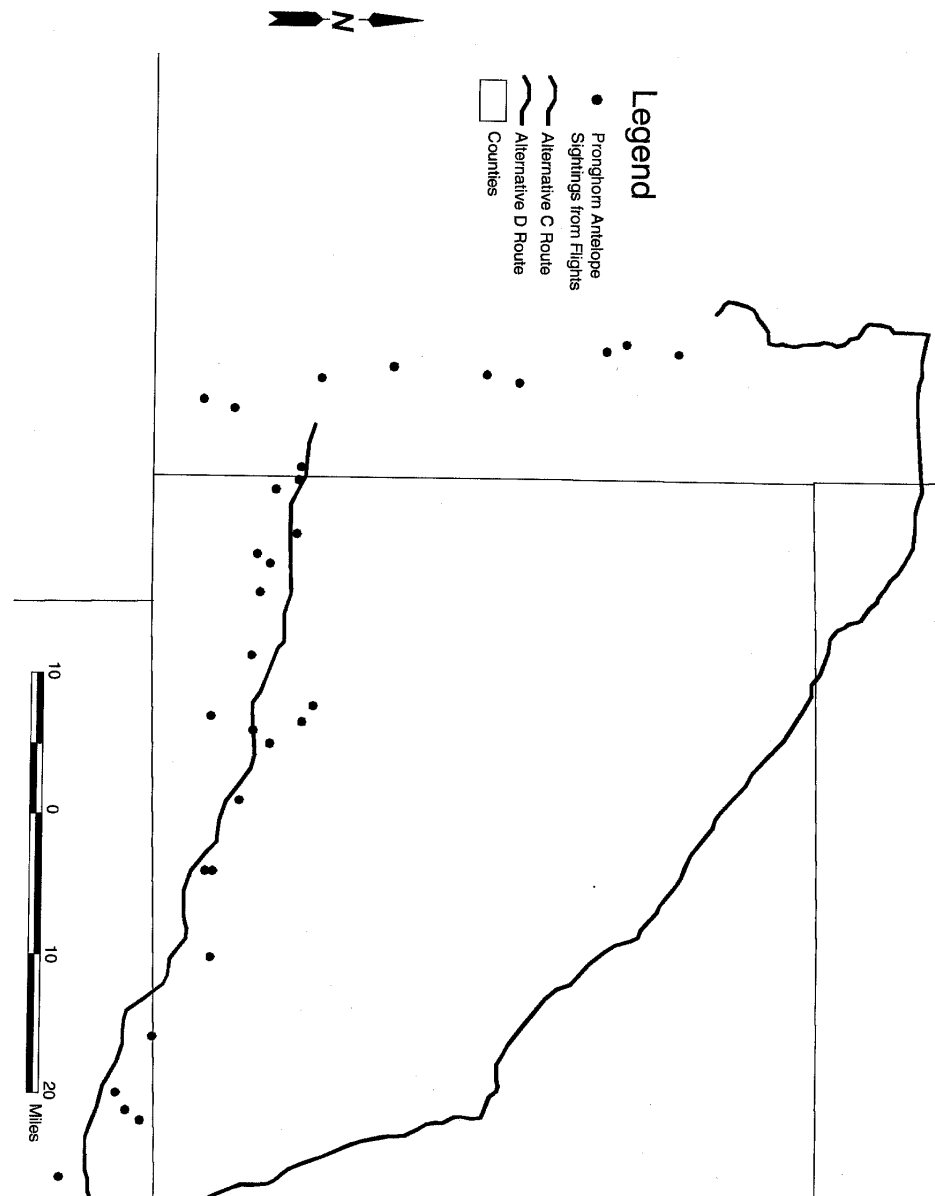
Connelly, J.W., M.A. Schroeder, A. R. Sands, and C.E. Braun. 2000. Guidelines to manage sage grouse populations and their habitats. In Press, Wildlife Society Bulletin.

These comments are reflective of a specific agency mission only. These comments defer to and are subordinate to the Official State Position.

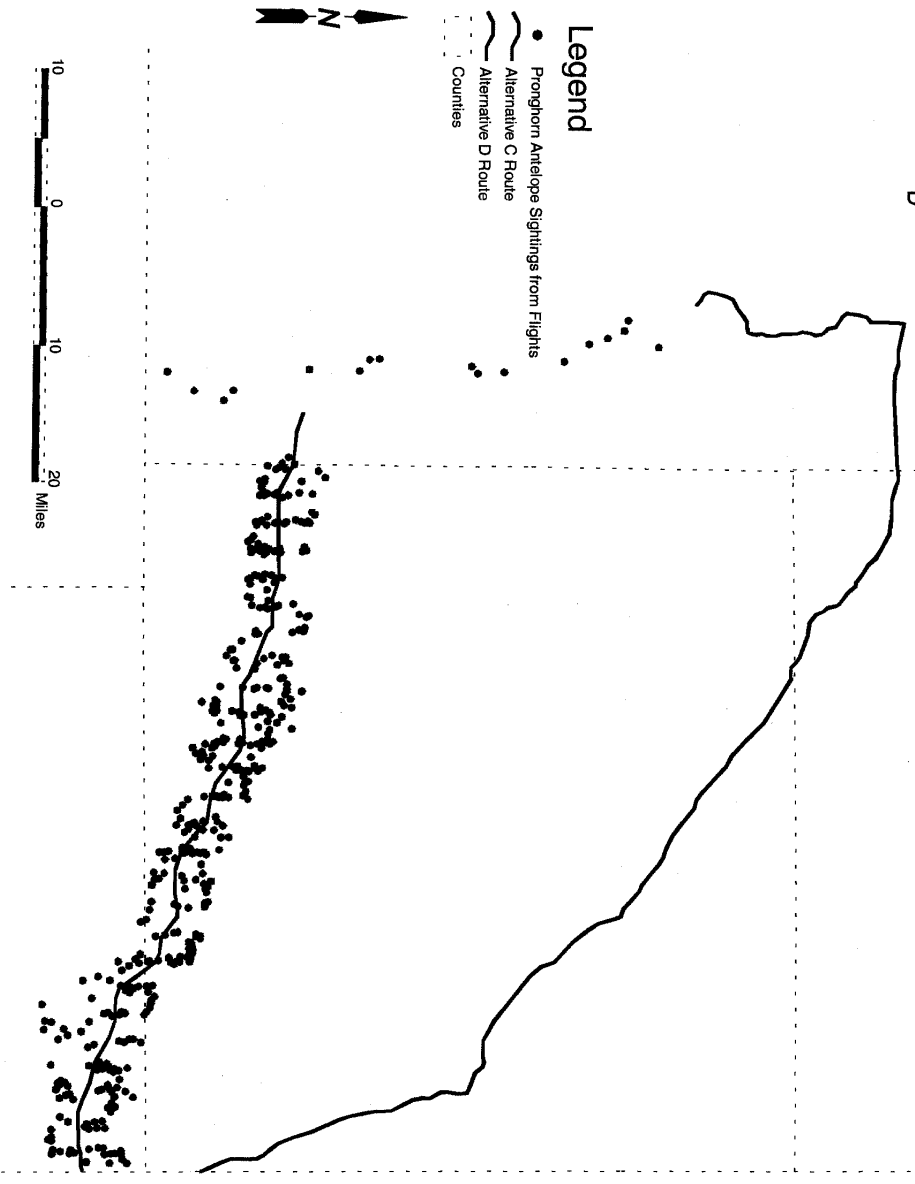
Map 1. Sage Grouse Lek Locations Relative to DM&E Alternative Routes C and D



Map 2. Pronghorn Antelope Locations with Greater Than 20 Animals Relative to DM&E Alternative Routes C and D



Map 3. Pronghorn Antelope Locations Relative to DM&E Alternative Routes C and D



Map 4. Mule Deer Locations Relative to DM&E Alternative Routes C and D

